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Berndt Keller

COOPERATION OR CONFLICT?

Occupational Trade Unions in the
German Industrial Relations System

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PRELIMINARY REMARKS

“Germany, a land united in its desire to go on strike?”¹ – this was the title of a recent feature on ZDF’s news magazine programme concerning current wage disputes in Germany. And indeed labour disputes do seem to be proliferating this year: for example, the train drivers of the GDL union have gone on strike nine times since last autumn. With the much bigger Eisenbahn- und Verkehrsgewerkschaft (EVG – Railway and transport union), which is affiliated to the DGB, by contrast, Deutsche Bahn (German Railways), after prolonged negotiations, were able to reach agreement without major disruption. The labour dispute, which went on for several weeks, between municipal employers and the Vereinigten Dienstleistungsgewerkschaft (ver.di – United Services union), whose main demand was that nursery school teachers’ be raised to a higher wage bracket, was the subject of sustained media attention. Last but not least, the announcement by Deutsche Post (DPAG) that it wanted to transfer thousands of jobs to 49 newly established regional companies on much worse working conditions resulted in a no holds barred labour dispute between DPAG and ver.di.

But does this apparent spate of collective disputes indicate a changing strike culture in Germany or even increasing competition between trade unions? Looking beyond the borders we find that there is still much less strike action in Germany than in its European neighbours. What, then, is the source of the perception of constant strikes? Part of the explanation is certainly that this year’s conflicts have been concentrated in so-called socially necessary services, which directly affect many people. Furthermore, the increasing influence of occupational and sectional (*Spartengewerkschaft*²) trade unions is often mentioned. This prompted the government to act, which found expression in the Law on collective bargaining unity (“one business, one collective agreement”), passed in May

2015. The relevant debate, however, is highly controversial and is often accompanied by the reduction of labour disputes to personal conflicts. A more sober, scholarly debate thus seems highly desirable.

The present study by Professor Berndt Keller has taken this as its cue to take an impartial look at the actual influence exerted by the increasingly active occupational trade unions on the stability of labour relations, as well as the negotiation structures and results of collective bargaining. It also looks at what effects on labour relations might be expected in the future.

I therefore hope that the reader will find this stimulating and that it may lead to further fascinating discussions.

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¹ “Deutschland einig Streikland?“, pun on the national anthem of the GDR, “Deutschland einig Vaterland” (Germany, united fatherland).

² A *Spartengewerkschaft* or “sectional trade union” represents the interests of an occupational group within an industry where industry bargaining is the norm.

1

INTRODUCTION AND PRESENTATION OF THE PROBLEM

1.1 INTRODUCTION

Since the early 2000s we have seen an unexpected – based on previous experience – increase in the influence of occupational and sectional trade unions, which were long scarcely known even to insiders. These organisations are prominent examples of a “new complexity” in industrial relations, especially collective bargaining, in some parts of the private services sector – and possibly beyond it. The established interest representation procedures and actors are changing due to the surprising renaissance of occupational associations, which one after another are mutating into occupational trade unions,³ after organising successful strikes and asserting their ability to engage in collective bargaining.

The relevant trade unions in this context are as follows:

- Vereinigung Cockpit (VC) (the German Air Line Pilots Association), founded in 1969, “is the association of air line pilots and flight engineers in Germany” (<http://www.vcockpit.de>). In the early 1970s VC entered into a collective bargaining association with the Deutschen Angestellten-Gewerkschaft (DAG – German Salaried Employees Union), which negotiated for the pilots. VC announced the collective bargaining association in 1999 when DAG decided to affiliate to the newly founded ver.di (Keller 2004). VC was the first occupational association to obtain its recognition as an occupational trade union through a strike, at Lufthansa in 2001, and conclude its own collective agreement, which initially led to considerable wage increases.
- The Unabhängige Flugbegleiter Organisation (UFO – Flight Attendants’ Association) has been a social partner on an equal footing since 2002 and is sole representative of flight attendants in relation to the airlines (www.ufo-online.aero).
- The Gewerkschaft der Flugsicherung (GdF – Union of Air Traffic Controllers) came into being in 2003 from the merger of the Verband deutscher Flugleiter (VdF – Association of German Air Traffic Controllers) and the Verband Deutscher Flugsicherungs-Techniker und -Ingenieure (FTI – Association of German Air Traffic Control Technicians and Engineers). A cooperation agreement concluded with DAG by these predecessor organisations broke down in 2002 because of dissatisfaction with DAG’s and ver.di’s representation (www.gdf.de). In 2003 the GdF asserted its independence and achieved recognition and is now the sole employees’ representative in relation to the German Air Traffic Control Authority (DFS), with which it concludes regionalised collective agreements. The GdF is not in competition with other trade unions and to that extent occupies, along with UFO, a special place within the framework of our investigation. Furthermore, in the late 1960s and early 1970s air traffic controllers successfully carried out industrial action similar to strikes (Lange 1990).
- The Marburger Bund (MB), founded in 1947 (summarised in Greef 2012), cooperated for several decades – until 2005 – with, first, DAG, then with ver.di (www.marburgerbund.de). As privatisation and marketisation increasingly began to afflict hospitals and in the public sector the public sector collective agreement (TVöD) superseded the federal employees’ collective agreement (BAT) (Greef 2010; Silvia 2013), resulting in a further deterioration in the working conditions of all employees (especially wages, but also working time), in 2006 the MB finally declared its independence as a social partner for strike and protest action by (assistant) doctors at university clinics and municipal hospitals.
- The Gewerkschaft Deutscher Lokomotivführer (GDL – Trade Union of German Engine Drivers) (summarised by Kalass 2012) is the oldest existing German trade union (www.gdl.de). It finally asserted its independence as a social partner, after several unsuccessful attempts, in 2007/2008 in a prolonged industrial dispute with Deutsche

³ Concerning terminology: we use the term “occupational association” for the phases before and the term “occupational trade union” for the phases after de facto recognition as a party to collective bargaining.

Bahn, against the opposition of the other railway unions. In our context it is important that the GDL lays claim to representing not only the engine drivers, but also all train crew, including guards, on-board caterers, dispatchers and shunting engine drivers in relation to Deutsche Bahn and private railway companies.

An organisational problem results from the fact that there are two umbrella organisations: the general Deutsche Gewerkschaftsbund (DGB – German Trade Union Confederation) and the specialised Deutscher Beamtenbund und Tarifunion (DBB – German Civil Service Federation). The occupational trade unions are – with the exception of the Eisenbahn-und Verkehrsgewerkschaft (EVG – Railway and Transport Union), which we have not yet looked at – unlike the industrial trade unions, not members of the DGB, but mostly remain independent (MB, VC, GDF and UFO). The GDL, by contrast, is a member of the DBB. As a result of this organisational separation at the umbrella organisation level the latent competition between member organisations becomes manifest and takes on a different quality from that between DGB organisations, which remains latent, although conciliation is easier (Bispinck/Dribbusch 2008). Similar to the situation in a number of other countries (Akkerman 2008) the competition between umbrella organisations can be one determinant of collective bargaining.

Key to the course and outcome of collective negotiations is the question of whether organisational domains and thus the trade unions' representativeness claims are delimited or overlap. We shall go into this decisive difference with regard to conflict potential in due course. This competition is also significant with regard to the debate on single or multiple collective agreements, which we shall look at in more detail below.

Because of the varying importance that these organisations have had in past years for the development of their sectoral labour relations, in particular labour disputes, we shall look especially at the VC, MB and GDL.

1.2 PRESENTATION OF THE PROBLEM

The questions that shall guide us in this report are as follows: Is the strengthening or transformation of occupational associations into occupational trade unions substantially changing the established structures of interest representation? Is their influence over the functional conditions, especially the stability of labour relations and here in particular collective bargaining, increasing, not only in the short, but also in the long term. What are the particular consequences of trade union competition for negotiating structures and the outcomes of collective bargaining?

We explicitly distinguish several dimensions of these general problems, which we analyse not, like other studies, in the form of detailed case studies (Lange 1990; Greef 2012; Kalass 2012) of individual organisations, but in comparative perspective:

- We first look at the organisational and organisation-theory conditions and prerequisites (Section 2). Organisations' operational and organisational capabilities, which determine their strategic options, represent a fundamental, complex problem, whose dimensions we examine one after the other (Traxler 1999; Traxler et al 2001; Kittel 2003).
- We then switch from the members to the question of influence and analyse the medium- and long-term goals of these associations, differentiating between the general and particular goals, current developments and practical options of the other actors (Section 3).
- More far-reaching findings and consequences follow, as we switch our approach from the explicatory to the normative level. We pay particular attention to the controversial problem of single versus multiple collective agreements and the options for developing relations between associations (Section 4).
- After that, in an excursus we consider the situation at Deutsche Bahn (Section 5), whose complex collective negotiation structure is at the heart of current labour disputes.

2

CONDITIONS AND PREREQUISITES

Constituting the point of departure of our analysis are the various principles of organisation and their consequences. In the case of industrial trade unions criteria such as occupation, status, qualifications, years of service, political attitudes or employee's religion have no significance ("one workplace, one trade union"). Industrial trade unions, in contrast to occupational or company trade unions encompass all employees in their organisational domain; they are, as a rule, unified trade unions, as distinct from, for example, the so-called "*Richtungsgewerkschaften*" (unions with particular ideological or political leanings) in other countries (such as France and Italy): independent and neutral in terms of their world view or ideology, as well as with regard to political parties.

If this organisational principle can be realised in pure form, competition by definition cannot arise between trade unions, of the kind that emerged in the Weimar Republic and which has experienced a resurgence in recent years. Union federations and their collective negotiations are extremely centralised and lead to relatively homogenous outcomes. National and association-level agreements represent the central instrument of regulation. In the case of company and occupational trade unions, as they exist in, for example, the Anglo-Saxon countries and Ireland, the structures of collective negotiations are more decentralised and their outcomes more heterogeneous; workplace and company collective agreements predominate. In general, long years of experience show that in decentralised, uncoordinated collective bargaining systems there are likely to be more labour disputes than in comparatively centralised and coordinated systems, such as that of the Federal Republic.

Although the industrial federation principle has been dominant since the re-establishment of trade unions in the early period of the Federal Republic, there have always been others, including occupational trade unions.⁴ Over several

decades their activities were few and far between and generally not independent of those of the DGB unions. They thus attracted less public attention until the early 2000s. The consequences of this "coalition pluralism" remained largely beneath the radar of political debate and did not receive much attention in the literature, either.

When there are several trade unions on an equal footing the dispute is no longer only between the collective bargaining parties, as a dispute concerning the distribution of jointly generated revenue, but is largely an organisational dispute about members and influence. Further lines of conflict between groups of employees are becoming virulent, as current instances show.

2.1 RECRUITMENT AND RETENTION OF MEMBERS

The first sub-problem with regard to associations' action and organisational capabilities concerns the recruitment and retention of members. The latest research in this area and so-called "public choice theory" in economics emphasise the significance of group size for the ability to organise in pursuit of interests. In contrast to the assumptions of the older pluralism theories the theory of collective action puts the weight of its arguments largely on group size (Olson 1968, 1985). Small, homogenous groups, due to the mutual dependence of their members, are easier to organise than large ones. A key organisational problem of associations results from the fact that what they do – in our cases primarily the outcomes of collective bargaining or occupational and professional lobbying – to some extent also benefits non-members; because of their character as a collective good they do not represent any incentive for individuals acting in their own interest to join. This fundamental difficulty with regard to organising collective interests, in the case of guaranteed voluntary membership cannot be rectified by means of organisational mechanisms of compulsion (such as compulsory membership along the lines of legal or de facto closed shop or union shop regulations).

⁴ They included the Deutsche Angestellten-Gewerkschaft (DAG) up to the merger with several DGB organisations to form the Vereinten Dienstleistungsgewerkschaft (ver.di); the member organisations of the DBB; the associations that form the Christlichen Gewerkschaftsbund (CGB – Christian Trade Union Federation); the Union der Leitenden Angestellten (ULA); and the VAA – Führungskräfte Chemie (Chemical industry managers).

This problem can be solved more easily and better in small groups than in large ones. The latter have to offer selective incentives in order to overcome the problem of free riding in order to marshal individual contributions to achieving common goals. Only association members are entitled to these private goods and services, such as legal protection, insurance and information services.

Given the need to solve the basic problem of recruitment the existence of small associations comes as no surprise. It is not their absolute number of members, but their high level of organisation compared with industrial unions that matters, which makes perfect sense in terms of “public choice theory”.

Number of members and level of organisation are often selected as indicators of an association’s internal resources and its external negotiating power or clout; they also indicate an association’s political legitimacy. Only limited information is available on the development and state of membership. The published data make it possible to determine the gross level of organisation.⁵ At all occupational trade unions the level of organisation is relatively high, although the service sector is difficult to organise. This indicates that the membership potential of narrow organisational domains is largely exhausted and that the association is very attractive to employees. Furthermore, membership numbers are relatively stable over time; in contrast to industrial trade unions, membership losses are rare. Data provided by associations, however, are less reliable than the net level of organisation of these occupational groups, which is difficult to determine precisely.⁶

From the perspective of the associations what we have is a situation of competition for members, which is unusual for the legal-institutional framework of labour relations – and for the participants unfamiliar – given that the group-specific levels of organisation are already above average

and, as more recent experience shows, can by all means intensify further. From an individual standpoint there are more options: in the case of an industrial trade union there is only one alternative to membership, namely non-membership or ceasing to be a member, which would mean that one would no longer have a voice in the articulation or assertion of one’s interests by influencing the association’s decision-making (Hirschman 1974). In the case of competition between trade unions, by contrast, there is also the option of switching membership. This always involves existing unions and not new establishments.

The often de facto lower membership fees of occupational trade unions in comparison with industrial trade unions can influence individuals – especially those of a “utilitarian” bent – to decide to switch associations. Different membership costs figure in individual cost/benefit analyses, as do differences with regard to association services, such as a larger and/or better selection of private goods or the existence of selective incentives (Olson 1968, 1985). (Small) occupational trade unions are able to offer their members a range of group-specific or even workplace-related association benefits more easily than (large) industrial trade unions (in general, see Kahmann 2015; on MB, see Bandelow 2007).

This situation – the existence of alternative associations – is rather untypical for the Federal Republic because of the dominance of the industry federation principle. It is particularly relevant in our context if trade unions – especially the GDL – try to expand their power base or organisational domain at the expense of other unions. Such attempts also include poaching members from rival organisations, which is generally done by pointing to the conclusion of more favourable collective agreements than other unions.

2.2 AGGREGATION AND UNIFICATION OF INTERESTS

The second sub-problem with regard to associations’ practical and organisational viability concerns the aggregation and unification of (member) interests. Industrial trade unions are “overarching (large) associations”; occupational trade unions, by contrast, are “special (small) associations” (Olson 1985). The former experience more difficulties than the latter in not only aggregating, but unifying their members’ interests, which because of the much higher membership are more heterogeneous (for example, qualified versus unqualified, men versus women, full-time versus part-time

⁵ Levels of organisation are calculated as ratios of trade union members and dependent employees times 100. The difference between gross and net levels of organisation is as follows: in the case of the former, all trade union members are taken into account, while as regards the latter only employed members are counted; in other words, inactive persons – such as the unemployed, pensioners and students – are not included.

⁶ The GDL is the oldest still existing German trade union (on its history, see GDL 1992 and Schroeder et al. 2008), the MB was founded in 1947 (on its history, see Rottschäfer/Preusker 1997), the VC in 1969 and the UFO in 1992. It should be recalled that the first German trade unions were professional associations of comparatively well qualified employees and not industrial trade unions.

Table 1
Membership numbers and level of organisation of occupational trade unions

| Association | Number of members | Level of organisation |
|--|-------------------|---|
| Gewerkschaft der Flugsicherung (GdF) | 3.800 | Very high (80 %) among air traffic controllers; unknown among apron controllers |
| Gewerkschaft Deutscher Lokomotivführer (GDL) | 34.000 | 80 % of engine drivers and > 60% of train personnel |
| Marburger Bund (MB) | 114.200 | 70 % nationally |
| Unabhängige Flugbegleiterorganisation (UFO) | 10.000 | Across all airlines ca. 25 % |
| Vereinigung Cockpit (VC) | 9.300 | > 80 % at most airlines |

Source: GdF: www.gdf.de; GDL: www.gdl.de; Marburger Bund: www.marburger-bund.de; UFO: Hensche 2007: 1032; Vereinigung Cockpit: www.vcockpit.de; Schroeder/Greef 2014: 137.

employees). In the coordination processes necessary for formulating a coherent association policy the interests of well organised groups – such as male skilled workers – are likely to be taken into account in association bodies to a much greater extent than those of less organised groups, which are likely to fall by the wayside (for example, the unqualified or workers in untypical employment relationships).

Industrial trade unions in contrast to occupational trade unions are dependent, when it comes to safeguarding their operational viability, on their ability to strike an internal balance of negotiating power between strong and weak (with regard to labour disputes) groups of members. The former assert their own demands to a lesser extent than they would be able to do in independent-autonomous negotiations and support the latter, thus contributing to a certain generalisation of particular interests. To that extent what we have here is a kind of “proxy conflict” in contrast to comparable constellations of interest articulation by occupational trade unions. An association’s internal equilibrium, which forms the basis of its organisational power, is always unstable and has to be repeatedly re-established before and during collective bargaining.⁷

This state of affairs or functional logic can be described (along Durkheimian lines) as solidarity, which by means of collective action is supposed to alleviate or eliminate competition and shape the association’s identity or self-image. To put it another way, trade unions – like all other organisations, including associations – always have to establish their organisational and representational domains and, if need be, reorient them. This problem is not solved automatically and it is not a matter of whether, but of how they concretely define or organise access restrictions or lines of demarcation between equals or members and unequals or non-members; the goal is to achieve control over the labour market by means of access restrictions. “The demarcations of trade union inclusion are also the limits of exclusion. The perceived common interests of the members of a certain trade union ... are sometimes even determined as counter to those of external employees. By separating employees the trade unions have split traditional solidarity” (Hyman 2001: 170).

In the next stage of the analysis, related to this differentiation, we distinguish, in an analytic rather than a normative perspective, between inclusive and exclusive solidarity (Fichter/Zeuner 2002; Zeuner 2004), which for reasons related to organisational structure have different logics of action:

- Industrial trade unions have to establish inclusive solidarity between membership groups and in doing so not only take on board considerable problems concerning the unification or mediatization (insertion of an intervening

level of authority) of heterogeneous (group) interests but also solve them; internal association consensus building processes and mechanisms result in a certain levelling of highly group-specific demands.

- Occupational trade unions, by contrast, in relation to which sheer size is less important for the effectiveness of their interest representation, can “achieve” exclusive solidarity in favour of the labour and social policy demands of their comparatively homogenous clientele, without having to pay too much heed to the interests of other groups.⁸ Within the framework of their group-specific policies they can adopt a market orientation and “performance criteria” or demands for “more equitability” in favour of their members (“fairness instead of levelling down”). In case of success they extend the existing level of wage differentiation or increase the differences in working conditions.

The always latent problem of “desolidarisation” of members is more difficult to solve in the case of inclusive solidarity. With the merger of industrial trade unions to form multi-branch trade unions the degree of heterogeneity of interests increases almost automatically with the size of the membership. Other changes in the relevant environmental conditions (such as privatisation in the hospital and transport sectors, internationalisation of the economy or extension of policy areas or range of topics) point in the same direction. Increases in complexity of this kind confront “general” trade unions with new kinds of problems, among other things in relation to their political legitimacy, to which they have to react in their internal consensus-building processes, although they are unlikely to succeed. Furthermore, it is more difficult for such large groups to establish inclusive solidarity because of isolated actions by small occupational trade unions that can no longer be integrated in “solidaristic” association activities.

2.3 REPRESENTATION AND ASSERTION OF INTERESTS

The third problem pertaining to the pragmatic and organisational viability of associations is the external representation and assertion of interests. The representation by associations of social interests is conditional on the susceptibility of a social need to resolution by means of organisation and conflict. “Susceptibility to resolution by conflict depends on the ability of a group or of its corresponding functional groups to refuse to provide a service or to make a credible threat that they will refuse to provide a particular crucial service” (Offe 1974: 276). Small associations possess high

⁷ A “classic” example comes from the public service, in which a transfer of negotiating power took place from groups with clout, such as waste disposal workers and bus drivers to groups with less clout, such as municipal administration workers. The ÖTV (Trade Union for Public Services, Transport and Haulage) was able, despite certain conflicts over many years, to balance their differing interests of its members in individual collective bargaining rounds and to redistribute negotiating power.

⁸ An official statement by the VC union expresses this as follows: “The experiences of the past 30 years in aviation collective bargaining have shown that the big trade unions have increasingly been unable to show solidarity with the functional and leadership elites in their collective bargaining areas. Collective bargaining related to occupational groups has given way to the principle of levelling to the lowest common denominator. This has happened in particular at the expense of the development of flight deck working conditions” (Tarp 2008: 402).

conflict and disruption potential if their members occupy key positions in production processes or chains and thus cannot be replaced – or at least not in the short term and not completely.⁹ These options are based on the group-specific position on the labour market and are mediated via product markets. The disruptive potential of those involved in production is correlated with the degree to which consumers are affected in the sense of third-party or remote effects, which we shall examine later.

Functional elites are also often highly qualified elites, although despite repeatedly voiced assumptions to the contrary, this is not always the case.¹⁰ All of the employee groups we are concerned with belong to functional elites, however. In an economic perspective their scarcity on the labour market – which at least in the short term cannot be overcome – ensures them considerable influence or the ability to assert their interests. The possibility of replacing them with external »strike-breakers« also contrasts with other branches.

To employ different social science terminology these functional elites, because they occupy key positions, have considerable market and primary power. As a result of their combination in associations they possess a further necessary collective condition, namely organisational power. Associations can use these resources to assert their group-specific interests, which they have in fact done since the 2000s, under changed circumstances. The activation of this threat potential and the mobilisation of their members necessary to assert their interests is easier and more effective for small occupational trade unions than for large groups, such as industrial trade unions, because of the small group size and the tight-knit and rapid, both formal and informal communication options, both between members and between association leadership and members. The organisational form of specific interests also plays a key role in collective bargaining.

⁹ „Pilots have a special strategic position in relation to the airlines. The airlines cannot run without them and the investment in their training is considerable, so that it is well impossible to replace them in the event of a strike“ (Johnson 2002: 22). A study of air traffic controllers comes to the following conclusion: „Due to their control of extremely specialised tasks in a key role in air traffic the group achieved a high degree of clout in labour disputes. They were able to use their major disruptive potential in all ... phases of a dispute and by means of major disruption of air traffic to put strong pressure on the German government via the affected populace“ (Lange 1990: 144).

¹⁰ This at first glance surprising state of affairs can be confirmed on the example of engine drivers, who, besides an intermediate-level education, only have to complete a few months' training (Schmidt 2008; Schroeder et al. 2011).

3

GOALS OF OCCUPATIONAL TRADE UNIONS AND OPTIONS OF OTHER ACTORS

Having looked at the organisational conditions and organisation-theory prerequisites of a resurgence of occupational trade unions we shall look at their medium- and long-term goals, as well as the options open to other actors, namely industrial trade unions and employers. Or, to use the terminology of association research: after the dimensions of membership logic we turn to the logic of influence (first found in Child 1973 et al.). We shall shift – considering higher and more stable levels of organisation – the focus of the analysis from the internal-vertical to the external-horizontal structural dimension: to the goals and results of interest assertion.

3.1 GENERAL AND SPECIFIC GOALS

In an analytical perspective the overriding objective of occupational trade unions is to conclude autonomous-independent agreements for their members and not – or in an organisational perspective at least not exclusively – the best possible improvements in individual working conditions (especially remuneration and working time) within the framework of collective agreements.

First of all, after protracted reflections and internal discussions, they terminated their negotiation and collective bargaining associations (*Tarifgemeinschaft*) with industrial trade unions.¹¹ After completing these “divorces” they insisted on separate negotiations for the small groups they represent, which without exception are in key positions; they demonstrated their clout and willingness to take action in a more or less spectacular manner in relation to employers and the general public. Because of their former membership of collective bargaining associations and their committees they possess extensive negotiating experience, which they have been able to deploy successfully. Finally, they are well aware of their options for exerting influence.

In these processes they are not dissimilar from “business unions”¹² of the Anglo-Saxon variety and in their organisational domains are in fact in competition with industrial trade unions. They operate not only as utility maximisers on behalf of their members in the strictly economic sense – with regard to income, working time and so on – but also pursue independent organisational goals (such as recognition as negotiation partners and survival as an association).

Once they have concluded their first autonomous specific collective agreement («functional group-specific collective agreement») these associations achieve a substantial status boost through the official recognition of their independence or autonomy. Once they have achieved this status in relation to both rival trade unions and employers, not to mention legitimacy in the eyes of the general public, there is no turning back. The agreements concluded by VC, MB and GDL that came on the heels of the first group-specific settlements confirm this state of affairs.

¹² In contrast to industrial or multi-branch trade unions, small trade unions related to individual enterprises that represent the homogenous, primarily economic interests of very specific groups of employees and do not take a political stance, but rather act like companies.

Table 2
**Occupational trade unions:
year of foundation and first collective agreements**

| Association | Year of foundation | First collective agreement |
|-------------|--------------------|----------------------------|
| Cockpit | 1969 | 2001 |
| GDL | 1867 | 2007 |
| GdF | 1952/2004 | 2004 |
| MB | 1947 | 2006 |
| UFO | 1992 | 2002 |

Source: Lesch 2010a, 1; Greef/Speth 2013: 13; Bispinck 2015.

¹¹ VC with DAG or ver.di; GdF with ver.di; MB with ver.di; GDL with Transnet and the GDBA (latter two now merged as EVG).

This substantial change in status is not merely symbolic and persists, especially because these associations exhibit their ability to support a strike not only in terms of strike threats or warning strikes but by effectively demonstrating it to employers and the general public with actual strikes. Their new status of occupational trade union is markedly different from their previous incarnation as professional or occupational associations engaged solely in lobbying and activities in alliance with other trade unions. From an organisational standpoint their strategic goal not only of ensuring their existence but also upgrading their status permanently has been achieved. From the standpoint of the industrial trade unions, by contrast, a rival organisation has been established. In this way there is no longer any fundamental dispute about recognition, although this does not mean that there will not be future conflicts of interest in individual collective bargaining rounds.

3.2 CURRENT DEVELOPMENTS

A key question has still not been answered: why did the occupational trade unions, all of which can look back on a long history, not develop “class consciousness” (much) earlier than the 2000s and demonstrate their clout or exercise their evident power resources? The question does not concern the mere existence but rather the actual actions of the occupational trade unions.

The attempts at explanation made in the public debate generally point towards the “integration deficit” of occupation-specific interests and the interests of well qualified employees or a “failure on the part of the DGB organisations and their claim to sole representation” (Viering 2008: 34), especially the transition from industry to multi-branch trade

unions and specifically the founding of ver.di.¹³ These assumptions imply that as association size increases and the membership begins to become more “anonymous” it becomes more and more difficult to take due account of specific group interests.¹⁴ Occasionally, this suspicion mutates into “ver.di bashing” and becomes more or less explicit, as their strategic failure to pay more attention to group-specific interests becomes evident (Council of Experts 2010: Ziffer 501).

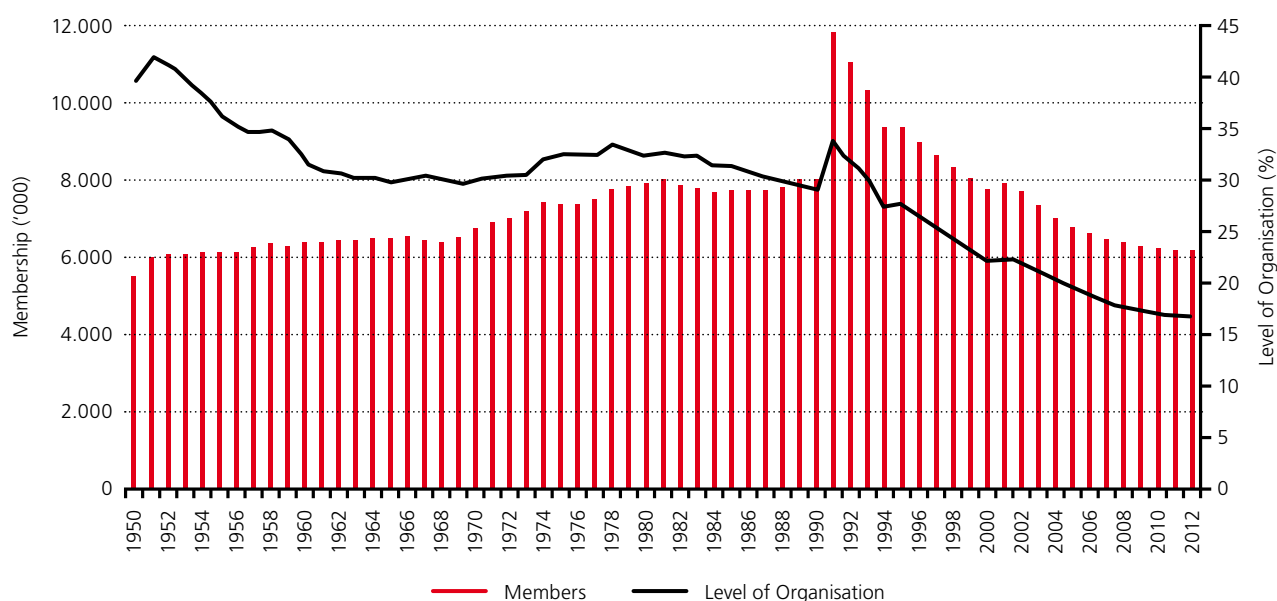
There may be a certain plausibility in the idea of a link between the founding of ver.di in 2001 and the strengthening and labour disputes of, first, VC Cockpit (2001) and later of MB (2006), beyond pure coincidence. For bigger trade unions that inevitably emerge as a result of mergers the difficulty of integrating more and more heterogeneous group interests in their (collective bargaining) policies increases. Groups of employees that already have organisational experience and, as already mentioned, are located at key positions in production processes can attempt to benefit from this situation.

This attempt at explanation in terms of trade union mergers, so to speak on the model of “communicating vessels”, definitely does not apply in the case of Transnet or GDBA and GDL, however, because the (company) trade union of German Railway Workers (GdED), the predecessor organisation of Transnet (transport, services, networks), notwithstanding its original intentions, made a point of not joining (Keller 2004) ver.di, but remained independent (<http://www.transnet.org/> TRANSNET/wir), while GDL asserted its

¹³ Cf. Müller et al. (2002: 105ff.); Schroeder et al. (2008: 38, 60); Greef/Speth (2013: 17); Silvia (2013: 164f.).

¹⁴ Müller/Wilke (2008: 32; similarly 2006: 324f.) represent the thesis that “groups of members abandon existing solidarity not merely for opportunistic reasons, but because the pronounced levelling tendency in German collective agreements has, in their view, been dramatically intensified by the conclusion of so-called reorganisation collective agreements”.

Figure 1
Members of DGB trade unions, 1950–2012



Source: Schroeder, Wolfgang; Greef, Samuel (2014): Struktur und Entwicklung des deutschen Gewerkschaftsmodells [Structure and development of the German trade union model], in: Schroeder, Wolfgang (ed.): Handbuch Gewerkschaften in Deutschland [Handbook of trade unions in Germany], 2nd edition, Wiesbaden, 130.

independence in 2007/2008. Apart from that, this supposedly general explanation of the parallel development of larger and smaller associations does not explain why other trade union mergers, for example, to form IG BCE, have not led to similar consequences in their organisational domains.

More plausible is the view that there is a link between the decline in membership numbers and levels of organisation of industrial trade unions since the early/mid-1990s and the resulting decrease in their negotiating clout and internal retention. In contrast to these developments membership numbers in the occupational trade unions have remained stable or even increased slightly. Furthermore, earlier on, the proportion of civil servants (Beamten) without the right to strike among the members was much higher in some associations (such as GDL). Thus the obvious negotiating power existing since the liberalisation of parts of public services could not have been asserted – or only to a limited extent – earlier on without risking considerable legal sanctions from the competent courts. To that extent the window of opportunity for these organisations has changed in favour of independent action.

Finally, the influence of deregulation and privatisation measures cannot be unambiguously verified; several of the branches with which we are concerned were directly affected by such measures in the 1990s, however (Richter-Steinke 2011; Kalass 2012; Kahmann 2015). This means that “the phenomenon of trade unions representing a specific professional branch is ... a consequence of the restructuring of circumstances on product markets. In Germany, such trade unions are concentrated on companies in the transport and health care sectors (aviation, railways, hospitals); in other words, they arise on product markets that have long been dominated by monopolistic structures” (Monopoly Commission 2010: para 127).

The current discussion is focused – surprisingly or not – on the actions of occupational trade unions. Employers and their associations are (co)responsible for the situation of competition between associations that has arisen and thus they must be included in the analysis, even though the organisational changes have at first glance taken place solely on the side of the employees (cf. Bispinck/ Dribbusch 2008; Gall 2008). The reorganisation and restructuring measures (including privatisation and marketisation in hospitals or rationalisation at Deutsche Bahn) that have taken place in recent decades have led to more competition and considerable cost pressure, which is exacerbated by domineering and assertive shareholder interest in boosting profits in all business areas. Furthermore, as a result of all this the heterogeneity of interests is also increasing on the side of the employers and management. On top of that, in some cases there are favourable revenue and profit situations at companies as a consequence of substantial concessions on the part of the employees (for example, within the framework of company pacts to safeguard jobs at Deutsche Bahn), as well as considerable increases in executive board remuneration and the insufficiently publicised agreements on bonus payments.

Before their privations in the mid-1990s the former federal state assets Bundesbahn and Bundespost, in so-called side negotiations, adopted the conclusions of the main public service negotiations with few sector-specific

changes (Keller 1993). In the meantime both formal negotiations and negotiations on separate issues have taken place, which have increasingly led to divergent results (Keller 2010).

These developments have resulted in significant changes in established branch-specific collective agreements, as well as deteriorations in working conditions (among other things, intensification and flexibilisation) and massive job cuts (see Nickel et al. 2008 for a case study on the railways). The substantial “environmental” changes initiated by the employers in the direction of enhanced “marketisation” of working conditions have impacted on employee organisations and their options, leading to latent threats to individual segments of their organisational domains and dissatisfaction among their members. Furthermore, they foster a “climate” in which fundamental demands are raised and asserted.

In other words, the occupational associations exercise the options offered them by the favourable sector-specific »opportunity structures« to challenge the representational monopoly of the industrial trade unions and to change the traditional structures of collective negotiations in their own favour.

3.3 PRACTICAL OPTIONS OF THE OTHER ACTORS

The actors on both sides are inexperienced in dealing with this, for them, new constellation of framework conditions and interests. Among other things this, to date, has been reflected in prolonged exploratory talks and a refusal to engage in official negotiations on the part of the employers, internal conflicts and contradictory statements addressed to the public, involvement of moderators, lack of arbitration agreements concluded voluntarily but including a provision that if one trade union wants to engage in arbitration the other has to get on board, repeated issue of public ultimatums, withdrawal of concessions, martial rhetoric and a personification of the collective conflict in terms of the deficiencies and personal characteristics of the leading negotiators on the other side.¹⁵

Those involved have developed into “strategic actors” in view of the – emerging among other things due to privatisation measures – changes in the environment, exercising various options with the aim of controlling and/or absorbing the new zones of uncertainty at least in the core areas of their particular domains. For industrial or multi-branch trade unions the increasing influence of some occupational trade unions is first and foremost a challenge, and later on, in individual cases, a latent threat not to all, but to individual segments of their organisational domains and thus to their stability and continued existence. It calls into question their established, almost hegemonic and, to date, highly effective monopoly on interest representation in these segments,

¹⁵ The months-long talks conducted in public by both sides and involving very personal attacks between the GDL leader Manfred Schell and head of Deutsche Bahn Hartmut Mehdorn in 2007 and 2008 have become almost legendary (cf. for a self-evaluation and examples of verbal insults Schell 2009: 171f., 181).

exacerbates the latent rivalry for current and potential members – and thus for important resources, such as member contributions and power – and creates new conflict potential and areas.

This ambivalent situation of uncertainty within and between organisations is particularly problematic under the conditions of declining memberships and levels of organisation and thus scarcer, but critical association resources. In response to this dependency risky changes are called for in formerly established, standardised procedures; in particular, the strategic actions of competing associations because of the in principle limited rationality can be predicted only to a limited extent. In any case, exchange relations are changing between the associations and the necessary learning processes of corporate actors need time. Industrial trade unions have the following options:

- They endeavour first and foremost to prevent the organisational consolidation of the occupational trade unions and, if this does not work, find a *modus vivendi*. This attempt can succeed by means of pragmatic cooperation in key policy areas, especially collective bargaining.
- They continue to try to poach members from the rival organisation or to (re)integrate them by making changes in their own policy aims, especially collective bargaining policy.¹⁶ How a “more flexible” and/or differentiating, but in any case decentralised association policy can be shaped in specific instances – for example, by introducing group-specific special regulations as “windows” in national collective agreements – cannot be specified generally, but only by taking into account branch conditions.

The industrial trade unions’ member-oriented approach is based, as already mentioned, on the assumption of a certain unification, with a view to preventing the specific interests of individual groups from becoming (all too) dominant. Far-reaching organisational differentiation, for example, in the form of developing a complex matrix structure with two dimensions on an equal footing, of the kind that ver.di chose (Keller 2004; Waddington et al. 2005), aimed at better adaptation between the policy of the organisation as a whole and the particular interests of individual groups, is not enough to cope with the problem. Within the framework of the member-oriented approach the point is to improve the “fit” between the necessarily “levelling” organisation policy (especially collective bargaining policy) in order to take more account of the particular interests of individual groups (levelling versus differentiation).

An alternative, which, however, can only be the last resort, is the conclusion of (further) specific collective agreements for individual groups of employees by the same trade union. Provision must change – that is, be differentiated – in the direction of more group-specific and even workplace-

related services, as well as support for members along the lines of more and intensive “workplace policies”, not restricted to broader participation by employees in collective bargaining decision-making (“grassroots voting”) (Vassiliadis 2008: 411ff). However, the scarce material, especially staff resources impose narrow limits on alternative approaches to restructuring or “revitalisation”, whether proposed from within the organisation or externally recommended.

Given the heterogeneity of their members’ interests it is sometimes suggested that large trade unions differentiate their provisions for particular member groups (Kalass 2010) or pursue more occupationally specific collective bargaining (Lesch 2015). Both attempts – which can be understood in terms of a shift of emphasis from an influence-oriented to a member-oriented approach – would be likely to reach their limits fairly rapidly.

Management and employers also have options:

- First they take a neutral “wait and see” position, without making concessions, and bide their time to see whether an occupational association’s strike threat proves to be realistic. Its early “voluntary” recognition as a new collective bargaining partner without a strike is clearly ruled out as an alternative, as experience shows.
- If the process is not entirely without trade union involvement – in the sense of avoiding trade unions – they can then pursue a »divide and conquer« strategy, by setting the trade unions against one another or by trying to undermine the industrial trade union. This particular form of “trade union shopping” involves the conclusion of (company or workplace) collective agreements with small, especially CGB-affiliated trade unions, which declare themselves willing to participate in “dumping” and undercutting in “sweetheart agreements”, despite their low level of organisation.¹⁷ Furthermore, individual groups of employees in the same company can be given preferential treatment. However, there is a risk that the level of conflict overall will rise in such cases because relative (distributional) positions shift. Later de facto recognition by the employers increases, as already mentioned, the legitimacy of a small (insignificant in terms of number of members) organisation, especially a Christian trade union, because from an employer’s standpoint collective bargaining arbitration may make it »cost effective« to do so.
- Finally, when it’s clearly in their own interests – in other words, in order to bring about reliable and reasonably conflict-free regulation of labour relations over the long term – they can either prolong existing or commence a new cooperative relationship with industrial trade unions. For these reasons alliances of convenience can be concluded, based on a range of motives on both sides.

¹⁶ Poaching of members and especially of full-time officials was tried by ver.di in the case of UFO, with some success. This weakened UFO (Bsirske 2008: 416). To that extent, the tendencies towards a particularisation of interest representing associations are by no means as irreversible as they may seem. Moreover, poaching attempts or campaigns can be implemented in several directions, for example, by Transnet or ver.di in relation to GDL (Schell 2009: 159, 186). Both individual transfers and more or less organised poaching may play a role.

¹⁷ One prominent example is the temporary employment sector, in which employers had signed an agreement with the bargaining union of Christian trade unions for temporary work and personal service agencies (CGZP), whose adverse consequences included dumping and undercutting. In 2010 the Federal Labour Court rejected the CGZP’s right to participate in collective bargaining (Tariffähigkeit) and declared the collective agreements void. Other examples can be found in Müller (2008) and Hensche (2015).

4

CURRENT DEVELOPMENTS AND CONSEQUENCES

We now shift to the analytical level and switch from a descriptive-explanatory to a normative consideration of trade union competition, in which not all the positions dealt with necessarily chime with the individual preferences of the author. First, we shall look at issues concerning the validity of the principles of one collective agreement/one workplace versus a plurality of agreements. The focus will then shift to options for the future elaboration of relations between associations. We shall not attempt to dislodge the currently dominant legal perspective, but to supplement it with an empirically-oriented approach.

4.1 LEGAL AND EMPIRICAL DEVELOPMENTS: SINGLE OR MULTIPLE COLLECTIVE AGREEMENTS

Freedom of association, including the right to strike, is a precious asset, and in Germany it enjoys constitutional protection (Basic Law Art. 9, para 3). Legal problems include the proportionality of strikes, as well as the prohibition of excessive measures and causing economic losses. The political debate revolves primarily around the issue of whether the fundamental legal principle of single collective agreements ("one and only one collective agreement per enterprise") should be established as the dominant principle or whether it – among other things with reference to the fundamental right of freedom of association – should ultimately be replaced by the legal principle of multiple collective agreements; in other words, by the possibility of parallel validity of several collective agreements for different employment relationships in the same enterprise.¹⁸ The tension between these regula-

tory approaches must be clarified not only on the legal grounds of an assessment of associations' entitlement to participate in collective bargaining, but also in terms of fundamental collective bargaining considerations.

The positions diverge substantially.

- The Federal Labour Court (BAG) as court of first instance gradually moved away from its previous decisions – in keeping with majority opinion in the literature – in the 2000s (Bayreuther 2008). The Federal Labour Court had successively developed the legal principle of collective bargaining unity ("one workplace, one trade union"), which the Law on Collective Agreements does not prescribe, and maintained it for several decades for pragmatic-political reasons of legal certainty and clarity (Weiss 2013). In 2010 the Federal Labour Court finally explicitly recognised the legal principles of collective bargaining plurality as a result of competition between coalitions (BAG, 27.7.2010 – 4 AZR 549/08). This landmark decision strengthened the de facto already achieved status of the occupational trade unions and confirmed that several collective agreements can apply for different groups of employees in the same enterprise.
- It has been possible to unify the positions within the employers' camp. Above all the directly affected employers and their organisations, as well as the umbrella organisation the Confederation of German Employers' Associations (Bundesvereinigung der Deutschen Arbeitgeberverbände – BDA) are lobbying aggressively for restoration of the principle of collective bargaining unity, among other things because of the practical problems of dual collective agreement coverage of individual groups of employees (BDA 2013, 2014).
- The umbrella organisation the DGB also finally voted, after prolonged internal discussions, for the restoration of the principle of statutory collective bargaining unity, although several of its member unions – especially those most directly affected, namely ver.di, the Trade Union

¹⁸ In a legal perspective plurality of collective agreements must be explicitly differentiated from competing collective agreements (Däubler 2012). The former exists when different collective agreements apply to different groups of employees in a company. The latter occurs, among other things, when different collective agreements apply to individual employees; in other words, when a company and an association-level agreement apply to the same employee or when there is a company agreement and an agreement that has been declared generally binding. In these cases the principle of specification shall apply, in other words, the more specific, narrow and detailed collective agreement shall have priority.

- for Education and Science (Gewerkschaft Erziehung und Wissenschaft – GEW) and the Food, Beverages and Catering Union (Gewerkschaft Nahrung-Genuss-Gaststätten – NGG) – still explicitly hold the contrary position (Hensche 2014; Wendl 2012). Immediately after the Federal Labour Court ruling the BDA and the DGB launched an at first sight rather unexpected joint initiative “Ensuring the functionality of free collective bargaining – statutory regulation of collective bargaining unity” (Dribbusch 2010; Hundt 2010; Sommer 2010). This activity was abandoned for the time being in 2011 because of differences of opinion between the DGB trade unions, but in 2014 it was reactivated after a decision by the DGB national congress. Their implicit common aim is to ensure their own (majority and dominant) positions in industrial relations, especially in collective bargaining, while conserving and safeguarding their own resources. Otherwise transaction costs on both sides would be much higher (Williamson 1985, 1996).
- The government coalition of the CDU/CSU and the FDP (2009–2013), notwithstanding earlier reports to the contrary, did not take up the problem because the FDP was ultimately unable to agree due to constitutional concerns (Hege 2015). The political project of statutory regulation was set aside, however. The Grand Coalition government of the CDU/CSU and the SPD took up the plan in its 2013 coalition agreement and in late 2014 presented the “Draft of a law on the regulation of collective bargaining unity” (Bundestag 2015a). The Bundestag adopted the Collective Bargaining Unity Act in May 2015.
 - The opposition parties vigorously reject the law and consider it unconstitutional on the grounds that it infringes the right of freedom of association protected in the Basic Law.
 - All occupational trade unions, as well as the German Civil Service Federation (DBB Beamtenbund und Tarifunion) have voted, in contrast to the majority of DGB trade unions, vehemently for the maintenance of the principle of collective bargaining plurality, which is perfectly understandable in view of their interests and how any changes would affect them. They argue, among other things, that it would involve a massive, impermissible interference in collective freedom of association. These associations have given notice that they will bring proceedings under the Basic Law in the event of statutory regulation.
 - The timing of the Federal Constitutional Court’s (BVerfG) ruling cannot be determined, nor can its substance be anticipated. The relevant legal opinions, however, generally point towards considerable legal problems. Apart from that, a resumption of the principle of collective bargaining unity is likely to turn recent Federal Labour Court rulings on their head. After the judgment the damage to the image of the losing side was considerable.
 - Economists are divided: some are calling, because of a feared “competition to bid up wages” among competing trade unions, and »problems of practical manageability in workplace practice« (Franz 2007: 4; also Council of Experts 2007: 361ff.; Lesch 2008: 152) for the restoration of collective bargaining unity; others regard the development of collective bargaining plurality as “inevitable and irreversible” (Berthold 2007: 5) or recommend a “gathering and evaluation of experiences” and advise against »legislative actionism« (Council of Experts 2010; Ziffer 507, 2014; also Bachmann et al. 2011; Schmidt et al. 2012).¹⁹
 - The reports that lawyers produced in particular after the abovementioned Federal Labour Court ruling of 2010 for parties and associations (Däubler 2015; di Fabio 2014; Hensche 2015; Rieble 2010; Scholz 2010; Waas 2011) support the position of the relevant client; they thus come to contradictory conclusions, although most of them express considerable constitutional and labour law concerns.²⁰
 - Finally, representatives of a wide range of interests have also expressed their views. An initiative produced by a number of professors at the behest of the Carl Friedrich von Weizsäcker Stiftung presents a legislative proposal to limit “labour disputes in services of general interest” (for example, energy and water supply, health care provision, transport companies) (Franzen et al. 2012). This proposal, which its authors justify in terms of the restriction of the fundamental rights of third parties or the third-party or long-distance effects of a labour dispute, as well as in terms of public welfare considerations, concerns not only the occupational trade unions and the legal principle of collective bargaining plurality, but goes, in its appeal to the legislator and its demands for restrictions on the right to strike in services of general interest as a whole, well beyond the regulations of the Collective Bargaining Unity Act (Hege 2015). To that extent it is to be understood as an alternative to more extensive political regulation, which, among others, the business wing of the CDU supports.²¹ One problem among others is the precise demarcation of branches

¹⁹ The Monopoly Commission (2010) presented a draft of its own after the Federal Labour Court ruling of 2010, comprising five proposals: temporal coordination, in the sense of synchronisation of collective bargaining negotiations, cooperation obligations for all trade unions, comprehensive lockout rights, compulsory (that is, involuntary) early resort to mediation and control of abusive practices. It has not been clarified whether the realisation of this proposal interferes with the rights of freedom of association and free collective bargaining.

²⁰ The Research Services of the Bundestag, in an unpublished report produced in early 2015, also consider that the draft law is unconstitutional because it infringes collective freedom of association; empirical evidence was lacking for the multiplication of labour disputes invoked by the federal government, as well as for a threat to industrial peace.

²¹ The party's business wing is also calling for the involvement of the education system and of child care institutions. Apart from that, notice periods for strikes and legally prescribed mediation procedures are also on this agenda.

that would be affected by restrictions, as well as compatibility with the principles of freedom of association and free collective bargaining.²²

4.2 CRITICISMS

The decisive passage of the Collective Bargaining Unity Act, which concerns the amendment of the Collective Agreement Act (Tarifvertragsgesetzes – TVG; Art. 1, para. 2), says: “Insofar as the scope of application of collective agreements with dissimilar contents concluded by different trade unions overlap (conflicting collective agreements) in the workplace only the legal provisions of the collective agreement of that trade union shall apply which, at the time the most recently concluded conflicting collective agreement was concluded in the workplace, had the most members in employment”. If their scopes do not overlap several collective agreements may continue to apply in parallel (so-called voluntary collective bargaining plurality).

Besides constitutional and labour law problems, as yet unclarified issues of implementation and effect include the following:²³

- Procedures that would be not only legal but also operational in establishing representativeness – in other words, majority ratios with regard to trade union memberships – in the event of collective bargaining conflicts can be specified only unsatisfactorily. A vote among the employees can be ruled out as impracticable. Weaker trade unions are likely to oppose this because their rights would be substantially reduced, which would lead to membership losses or put off potential members. Publication of membership lists by trade unions “in order to establish the majority in the workplace” is excluded on the legal grounds of members’ informational self-determination and would provide the opposing side with information on threat potential. Holding a vote to decide which trade union shall be representative is also not a reliable expedient. The law favours the principle of representativeness as an ultimate conflict resolution mechanism:

The validity of a collective agreement is supposed to be oriented in terms of the »workplace majority principle“. As evidence, the law provides for a “notarial declaration”, although its preparation and verification can, in individual cases, pose considerable practical difficulties (Deutscher Bundestag 2015c). In specific conflict situa-

tions the responsible labour courts would once more or still be under substantial time pressure to make a decision. This involves not only, as in the past, problems concerning the proportionality of strikes, which in individual cases are difficult to operationalise, but also the submitted membership lists, whose completeness and accuracy may be called into question by both the other trade union and employers. Finally, it remains unclear what collective bargaining regulation should apply to unorganised workers.

- Also the option provided of adopting a collective agreement concluded by another (the majority) trade union – the so-called subsequent right of acceptance in the case of a preceding right to consultation by the employer – does not solve the problem; this is a “placebo for the minority trade union” (Hensche 2015: 26), whose rights are significantly restricted. Although the law is supposed to reduce competition between trade unions it can have the opposite effect: it can even exacerbate the competition because every organisation must try, with all the resources at its disposal, to mutate from minority to majority trade union in order to be able to assert its interests and those of its members effectively.²⁴
- The “representative” collective agreement, which longer follows the speciality principle, is also supposed to establish a general peace obligation; in other words, it is supposed to make the collective agreements of rival trade unions binding for its duration – and thus is likely to make it unattractive to its members through the de facto withdrawal of its negotiating power or ability to conduct a strike. To put it another way: for the implementation of the alternative, so-called follow-on collective agreement a labour dispute may be started only after the expiry of the representative collective agreement, which makes its conclusion irrelevant.
- The term “workplace” is supposed to be determined in terms of works constitution and collective bargaining law. It is not formulated precisely enough or distinctions are not drawn sufficiently clearly from more large-scale forms of organisation. The precise definition of the workplace falls under the exclusive organisational right of the employer, which can give rise to various courses of action (Preis 2014).²⁵ Thus they can make autonomous decisions about outsourcing to subcontractors.

²² The law favours the large (industrial) trade unions and downgrades the small (occupational) trade unions. It must be borne in mind that in different branches (for example, in hospitals or emergency services) the collective agreement partners have concluded so-called emergency service agreements on a voluntary basis, which, in the event of a strike, guarantee basic or emergency provision. The replacement transport or flight schedules prepared by companies in the transport sector can also reduce the consequences of strikes.

²³ Cf. on the official justification and detailed riposte to criticisms, Bundestag (2015b). On criticisms from an association standpoint see, among others, Marburger Bund (2014).

²⁴ Majority ratios in the workplace can also be reversed; in other words, they are not inevitably in favour of the industrial trade union. To that extent their organisational interests are not as easy to define as may appear to be the case at first glance. Furthermore, collective bargaining conflicts can also occur between industrial trade unions (for example, in the energy sector or logistics); this possibility receives scant attention in the current controversies.

²⁵ The scope of the collective agreement would not, for example, be the group Deutsche Bahn AG, but rather various establishments within the group. In particular establishments among the around 300 rail operations the GDL has a majority of the organised members. Another frequently cited example is Deutsche Post.

- We shall look at the formation of bargaining unions, an option also to be regarded as desirable over the long term, in due course.

From an empirical perspective, the changes that have actually taken place make a case for the Federal Labour Court's (BAG) gradual shift from the legal principle of collective bargaining unity in favour of collective bargaining plurality:

- Differentiation or increasing heterogeneity has superseded a previous comparatively high level of homogeneity with regard to labour relations and the »association service branches is there collective bargaining plurality of industrial trade unions and occupational trade unions. Spillover effects in other areas of collective bargaining, which are supposed to justify the political pressure to re-establish the principle of collective bargaining unity, are not in evidence (at least to date). The number of occupational trade unions active in collective bargaining is small and remains constant, despite fears to the contrary; their significance for collective bargaining overall thus remains within narrow limits.
- Apart from that, competition between trade unions does not in fact – as already mentioned – represent a new kind of problem. It is just that for several decades this constellation of interest representation was not troublesome because of the cooperation within the framework of bargaining unions, specifically due to the at least implicit recognition and acceptance of collective bargaining leadership by the DGB member unions on the part of the smaller trade unions.²⁶
- Decisive for the future of labour relations, in particular collective bargaining, continues to be, as we shall discuss, not the mere number of trade unions, but the development of their mutual relations. The latter, in contrast to the former, is susceptible to only limited influence and can be formed and changed only by private actors.
- The level of labour conflict is not growing significantly – despite assertions to the contrary – notwithstanding the strikes carried out by occupational trade unions in recent years.²⁷ The public costs of strikes and the de facto consequences for uninvolved third parties are often overestimated to further particular interests.
- The regulation provided for can apply only to the small number of occupational trade unions. An increase in their number by means of the mutation of occupational associations into occupational trade unions or by new

establishments is not empirically discernible, at least to date. The number of enterprises in which collective bargaining plurality prevails remains low.

- The unequal distribution of strikes actually taking place among the individual occupational trade unions points to the fact that ultimately what we are dealing with is a "Lex Deutsche Bahn" or a "Lex GDL" or government intervention in individual instances for a company group, notwithstanding the existence of free collective bargaining. So-called collective bargaining conflicts do not occur in other areas – for example, in the case of Lufthansa with VC or in hospitals with MB – or at least for the time being, because the organisational domains and thus the responsibilities of the trade unions for individual groups of employees are relatively clearly demarcated from one another.
- Competition between trade unions can take the form of underbidding or overbidding. The political debate has only taken up the (potential) collective bargaining overbidding competition involving occupational trade unions, but not the – in the craft trade sector and in temporary employment, among others – comparatively more frequent underbidding competition, mainly by competing trade unions belonging to the CGB (Bispinck/ Dribbusch 2008; Schroeder 2008a and 2008b; Dribbusch 2009 and 2010). The former alone is declared to be an urgent problem and adduced as justification of demands for statutory regulation. The long-demanded "flexibilisation" of collective agreement law and policy and the "decentralisation" of labour relations, the conclusion of "sweetheart" collective agreements and the, by international comparison, above-average expansion of the low wage sector play in this context, astonishingly, as minor a role as the establishment of associations not covered by collective agreements on the employer side (Haipeter 2010; Behrens 2011), which boosts the representation of special interests and reduces the level of collective bargaining coverage. The positions of associations vary in accordance with tactical considerations.
- The principle of uniform conditions for all employees at a company has long ceased to apply, for example, in relation to various groups in so-called "untypical" employment (those in mini-jobs, temporary or contract workers) or due to outsourcing. To that extent the "division of the workforce" and the "disruption of peace in the workplace" complained of by employers are already faits accomplis, albeit in different branches from those complained about. However, the Collective Bargaining Unity Act, with its aim of restoring collective bargaining unity, does not address these quantitatively increasing developments. The emergence of collective bargaining plurality is only one and not the principal reason for this development towards pluralisation of employment forms, which have gone far beyond the long familiar split between the core and the marginal workforce. Finally, collective bargaining plurality is not exceptional either historically or by international comparison in relation to collective bargaining unity.

²⁶ Thus, for example, the decades-long existence of the independent DAG did not lead to a higher level of conflict because there were negotiation alliances with DGB trade unions, for example, in the public service with the ÖTV. The DAG did not try to improve its negotiating position by conducting negotiations itself or by strike action.

²⁷ In the federal government's response to a brief parliamentary query it says: "No statistical data are available to the federal government concerning the number of newly founded trade unions and the labour disputes they have conducted" (Deutscher Bundestag 2015b: 3).

The Federal Republic by international comparison is among the EU and OECD countries with the fewest labour disputes and the most economic peace (European Foundation 2007: 23ff.; WSI-Tarifarchiv 2015: chapter 4.4), so that political interference in the right to strike is hardly an urgent necessity. Within the framework of economic structural change the balance has shifted with regard to the branches hit harder and more frequently by strikes, from the production to the service branches (among others, from the metal and electrical industry primarily to private services). Besides this empirically frequently noted »tertiarisation« (Vandaele 2011) a change in form can be seen (Rehder et al. 2012).

The strikes held by occupational trade unions account for only a very small proportion of all working days lost, despite what is frequently assumed (Bispinck 2015). To that extent a return to the legal principle of collective bargaining unity imposed by law, on the ground of strikes in individual segments of private service sectors – especially the health care and transport sectors – can scarcely be regarded as urgent.

The frequently asserted relationship between trade union pluralism and strike frequency can be illuminated by looking at other countries. Experiences in the United Kingdom show that the existence of several trade unions in the same company does not necessarily lead to the fragmentation of collective bargaining and/or to a higher strike incidence: "if the different trade unions negotiate together as a unit the probability of a strike is lower than if they negotiate separately ... As a result, all possible problems associated with multiple trade unions can be ameliorated« (Metcalf et al. 1993: 8).

The state and state agencies are also to be included in the analysis under conditions of free collective bargaining as third-party corporative actors in labour relations (Crouch 1993; Traxler et al. 2001). Currently arising conflicts are to be resolved only through coordination processes before and during collective negotiations or the conclusion of collective agreements and not by means of temporary injunctions or judgments by labour courts or the Federal Constitutional Court.²⁸ To that extent the increasing number of appeals to responsible (labour) courts with the aim, by obtaining temporary injunctions on strike measures, of acquiring tactical advantages in specific negotiation situations, lead at best to temporary abeyance of the conflict, but not to permanent peace. To put it another way, the hope of judicial conflict resolution, of the kind sought on a number of occasions by the management of Deutsche Bahn in 2007/2008, has proved inadequate in both individual instances and overall because the problem is fundamental and can be resolved only through negotiations.

Subsequently, corporative actors have always adapted "flexibly" to changes in the legal framework, as their reactions to successive modifications of labour dispute law through case law since the founding of the Federal Republic prove (Däubler 2004; Hanau/Adomeit 2005). To that extent the actual effects of a restored collective bargaining unity

could scarcely be predicted; in particular in the implementation phase unexpected consequences could arise. In other words, the actual scope of legal intervention is limited and the associations involved would still need to develop organisational alternatives. In this context the state should not play a decisive role; what we are dealing with are associations and their "private regulatory activities".

International comparative studies have come up with a general finding that may at first glance be surprising from a German standpoint: "The assumption of a fundamental superiority of unitary trade union forms of organisation does not do justice to the complexity of labour relations in the different countries" (Prigge 1991: 504). Although this result of comparative research is astonishing for the Federal Republic in a contemporary perspective, that is by no means the case historically (for summaries of the classic models of interest policy and representation see Müller-Jentsch 1985; Streeck 1993, 2005; Schroeder/Greef 2014). Occupational trade unions were and are more than merely rudimentary organisational forms of bygone eras; industrial trade unions have by no means been dominant in all phases. Moreover, by EU or OECD comparison the increase in organisational variety and thus a "syndicalisation" or even "Balkanisation" of interest representation due to the increasing activities of occupational trade unions has been kept within narrow confines and is mainly a recent phenomenon.

This key nexus of a possible "diversity in unity" is confirmed by, besides historical experiences since the 1860s in Germany, examples from other countries. In a comparative perspective trade union competition represents rather the rule than the exception; the dominance of industrial trade unions is rather an aberration. Countries with corresponding experiences tend more than others to have institutionalised procedures for coping with problems.

4.3 RELATIONS BETWEEN ASSOCIATIONS – AND HOW THEY ARE SHAPED

Mediation procedures are the sole practicable options for conflict prevention or resolution for the reconciliation of interests in the phase between collective bargaining negotiations and strike action. Their procedural rules, which should be agreed as far as possible independently of the course of individual collective bargaining rounds and as a rule apply over the long term, are supposed to prevent conflict, in the sense of both averting and curtailing labour disputes (Keller 1975, 1985). They apply exclusively to collective regulatory conflicts, not to individual or legal conflicts. Such procedural rules – among other things, concerning the form in which procedures are instigated, time limits, issues concerning mediators, as well as voting rights – have existed for decades in important branches (including metal, chemicals, construction and the public service) and are repeatedly made use of. It may be that their agreement among competing trade unions even promises more success than collective bargaining negotiations by a trade union. It has therefore been repeatedly recommended that collective bargaining parties introduce voluntary-autonomous mediation agreements for collective regulatory conflicts.

²⁸ As, for example, labour courts have attempted with a temporary ban on strikes in long-distance passenger and goods transport, but not in regional and local transport. Higher courts have reached different decisions.

In particular the resort to neutral mediators or the intervention of independent third parties, who as chairs can be given voting rights by the collective bargaining parties, provides further opportunities for agreement despite real negotiation bottlenecks. It can, among other things, influence the flow of information and communication between the parties and assume responsibility for the proposed outcome. Frequently – for example, in 2007 and 2015 in the case of Deutsche Bahn – two mediators are brought in, who alternately have the chair and voting rights.

During mediation, in accordance with Federal Labour Court rulings, the collective agreement peace obligation shall apply; there is no risk of labour disputes and strike measures already under way are suspended. In the case of packages of demands that consist of several different parts the probability of an agreement is higher compared with a single demand because trade-offs between elements are more feasible. Public statements – for example, by the mediator – before or during the process are not conducive to reaching agreement; this also applies to external interference (for example, by politicians). The fundamental refusal, in the absence of a long-term agreement, to enter into ad hoc mediation is unlikely – regardless of its justification in the given instance – to be conducive to reaching a consensus because it signals an unwillingness to compromise.

Furthermore, the distinction between a compulsion to submit to arbitration and a compulsion to reach agreement is important. The collective bargaining parties can agree in any event to attempt mediation before strike action, if one side wants it. The later recommendation of the parity-based mediation commission is – in contrast to arbitration and legal procedures and contrary to compulsory mediation between the parties ordered by the state, which in Germany existed only during the Weimar Republic – not automatically binding for the collective bargaining parties, but requires explicit acceptance or rejection. To that extent mediation can founder; resort to it is no guarantee of reaching an agreement.

The voluntary conclusion of mediation agreements, which did not happen in all the relevant collective bargaining areas in our context, would not impinge on the institution of free collective bargaining and would strengthen the principle of social partnership. A necessary condition of success would be the participation of all trade unions, as well as their autonomous-voluntary agreement on compulsory submission to arbitration in the event of conflict.

At Deutsche Bahn there was no such agreement. The GDL long categorically rejected, referring to “constitutionally protected rights”, all proposals to introduce a mediation procedure, while the Deutsche Bahn management declared itself willing to introduce such a procedure after some initial misgivings. A mediation agreement was concluded ad hoc during a prolonged strike. In the aviation industry, by contrast, such agreements exist – for pilots and flight attendants – and are actually used by the collective bargaining partners.

Finally, contractually ensured coordination of adjustment between associations that goes beyond non-binding declarations of intent is not, despite widespread opinion to the contrary, exclusively a problem for employees. Employers and, as the case may be, their associations are, especially if multilateral negotiations are necessary because of trade union competition, interested in concluding binding cooperation agreements in order to enjoy planning certainty with regard to cost development throughout the duration of collective agreements and to reduce the higher transaction costs that might otherwise arise. A specific problem with this agreement on collective bargaining “rules of the game” despite competition or rivalry, which on the employee side can lead to failure, is posed by the peace obligations that are no longer uniform throughout a branch, but company or even group-specific and result from different collective agreements and by the generally exacerbated risk of labour disputes.

On one hand, several negotiation rounds that, as in the case of Deutsche Bahn, are accompanied by industrial action, point towards a development towards rather “conflictual” labour relations or forms of interest regulation. On the other hand, even in the case of partially overlapping organisational domains between industrial and occupational trade unions in the majority of cases there exist scarcely surmountable ideological and/or fundamental (party) political differences that over the long term would hinder or even make impossible the emergence of somewhat more durable cooperative relations and the development of (generalised) trust.

There are two ways out of the de facto competition that the corporative actors did not originally intend: (I) the conclusion of formal cooperation agreements that regulate the responsibilities of the competing trade unions for specific groups of employees explicitly and, in coordinated collective agreements, sustainably; (II) without a formal contractual basis in de facto close coordination and gradually routinised cooperation in all phases of collective negotiations.

By contrast, the mere level of differentiation or pluralisation of the association system and the corresponding structures wake of decades of experience with the regulatory model based on the dominance of the industrial and unified trade unions a relationship is often entered into (Hoffmann 2007). For the long-term development of a “cooperative pluralism” of industrial and occupational trade unions, however, the practical relations between competing associations is of decisive importance. If agreements establishing pragmatic coexistence are concluded then competition is less problematic in relation to forms, results and consequences for interest representation than in the contrary case of a dominant, prolonged rivalry.

29 Some traditional lines of conflict are shifting in an unexpected – at least to outside observers – direction. In the public service, since the collective bargaining conflict in 2006 there has been a close, contractually based cooperation between DGB trade unions, primarily ver.di and dbb-tarifunion (bargaining union) (Kempe 2008). This rapprochement between DGB and DBB member organisations – which is owing to pragmatic calculation in relation to current options for asserting convergent interests – was initially extremely controversial given the state of contention within the two associations. This so-called agreement accord is notable and of fundamental significance for the further development of cooperation, without there being any intention of further reaching organisational changes along the lines of proper mergers. Another, little known example is journalism, in which there has traditionally been a joint agreement between trade unions.

In other words, the observed effects do not arise quasi-automatically from the existence of several trade unions as collective bargaining parties on an equal footing, but from specific negotiation structures prevailing in companies with more than one trade union. Two constellations, both of which require new forms of cooperation, can be distinguished:

(I) If the organisational domains in fact do not overlap, as in the case of, for example, ver.di and MB in hospitals or different groups of employees at Lufthansa, such as pilots, cabin and ground crew, as well as air traffic controllers, conflicts between associations, although possible, are generally avoided or limited, at least as long as all participants keep to the negotiated boundaries (so-called voluntary collective bargaining plurality).

(II) In the case of overlaps and attempts to change organisational domains – that is, their unilateral extension by a occupational trade union (in the case of the GDL from engine drivers to the train crew as a whole) an agreement is clearly more difficult. As a rule, resistance is likely not only from the other trade union (such as the EVG), but above all from the employer or management, for whom the negotiation situation is thereby further complicated because different collective agreements can be concluded not only for a company, but also for the same group of employees.³⁰ In comparison with the status quo ante the abovementioned transaction costs rise – also for the employers, who for reasons of “peace in the workplace” and planning certainty opt for uniform or at least “consistent” collective agreements.

Cooperative labour relations can be promoted and shaped on the employees’ side, as was usual in the past and is still the case in various collective bargaining areas, through the formation of bargaining unions. The associations voluntarily conclude formal cooperation agreements on a practicable division of labour with regard to the interest representation of different groups of employees, including mutual respect of their organisational domains, the ex ante coordination of demands and negotiating tactics. Negotiations on such an agreement require a minimum level of confidence that its conclusion and subsequent adherence to it can strengthen the trust needed for developing relations between associations.

Cooperation agreements, which among other things regulate mutual recognition of collective agreements with regard to their personal and functional validity, can vary with regard to scope and intensity. They only have to include certain areas of potential common interest, but by no means all. They must necessarily be negotiated at company level and have a longer term perspective. Subsequently occurring conflicts of interest should be resolved within the company, in other words, through non-judicial mechanisms. These agreements are not stepping stones to more far-reaching mergers of associations, which as a rule are entered into

from a position of weakness (Keller 2004; Waddington et al. 2005).

Achieving consensus about such agreements, which may or may not be concluded, is difficult because of the fundamental character of their regulatory contents not only in the short term, but also in the long term: as a result of the necessary commitment of the actors their room to manoeuvre within the framework of their gradually achieved independence as negotiating partners and their hard won autonomy is narrowed once again. Finding and reaching a compromise about procedural regulations can thus take longer than in relation to concrete short-term changes in substantive working conditions (such as income in collective wage agreements), and can be accompanied by new unexpected conflicts (as in the case of Deutsche Bahn in 2008/2009 and 2014/2015). It is possible that the negotiations may fail because of existing uncertainties; the assumption of a gradual, more or less linear development in the direction of cooperative-stable negotiation relations is unrealistic, based on past experience.

In order to guarantee a high level of effectiveness all involved trade unions, regardless of their membership of umbrella organisations and the personal characteristics and animosities of their full-time officials, have to participate in such agreements. The difficulties of reaching a fundamental agreement on new, hybrid rules and structures increase with the number of trade unions, as well as their membership of competing umbrella organisations.

In the converse instance of a lack of institutional arrangements every association in separate negotiations has a strategic veto position, which it can use to its own advantage. It does not agree to the agreements negotiated by the other association, but rather tries to get further concessions for its own members and can ruin the desired gains from cooperation.

Conflict between associations is not ended by the formal conclusion of a cooperation agreement, which can only aim at the preliminary normalisation and gradual standardisation of relations. In particular in the case of the later concretisation of arrangements within the framework of its implementation, as well as before and during the decision-making process in the subsequent collective bargaining rounds old, temporarily suspended conflicts can re-emerge and lead to sequential (follow-up) negotiations and thus to considerable transaction costs.

The overriding goal of such strategic alliances is the preservation or restoration of a certain not legal but de facto “collective bargaining unity” not at branch, but at enterprise level, if possible under the auspices of a common basic or industry-wide collective agreement applying to all employees, supplemented by differentiating functional agreements that regulate group-specific interests. Finally, the current tendencies towards further decentralisation of labour relations (in the sense of the often encountered shift from the sectoral to the enterprise level) can be constrained by means of contractually secured relations between associations, or at least steered in the direction of “controlled decentralisation”.

³⁰ To that extent the attempts to achieve a temporal and, above all, substantive synchronisation of the different negotiations and not to accept contradictory regulations for the same group of employees are, at first glance, understandable. The question is, however, whether this step takes place on a voluntary basis or is imposed by the legislator.

5

EXCURSUS: THE SITUATION AT DEUTSCHE BAHN

The situation at Deutsche Bahn merits particular attention because of a number of unique features. On one hand, the organisational domains are (no longer) clearly demarcated because the GDL claims to represent not only the engine drivers, but all train crew (including guards and on-board caterers, as well as dispatchers and shunting engine drivers). By contrast, the lines of demarcation between the other occupational trade unions – such as VC, GdF and UFO – and other, primarily industrial trade unions are clear-cut – or at least de facto largely unproblematic. This railway-specific problem has repeatedly led to labour conflicts.

At Deutsche Bahn, after privatisation in the mid-1990s, similar to the situation in the hospital sector, new, more complex negotiating structures emerged. On the employees' side there are rival associations (Lesch 2010b; Kraemer 2012) that are confronted with problems formulating common negotiating positions.³¹ Size of enterprise is the determining factor of association memberships and domains, which by international comparison is far from unusual (Traxler et al. 2007). The smaller operators fear losing their competitiveness in the case of membership of a larger association or the conclusion of a single, genuinely branch collective agreement. They prefer company agreements and resort to strikes less often because their level of organisation is lower.³²

The narrow organisational domains of the occupational trade unions are by no means as unchangeable and static as they might appear at first glance. Individual associations can try to extend them, among other things with the aim

of achieving more influence and greater organisational potency. Such plans can lead both to more conflicts between associations and also to the exacerbation of competition with other trade unions, as well as conflicts with employers. The expansion of organisational domains makes members' interests more heterogeneous and their representation more difficult. This state of affairs can result in considerable dissatisfaction among some groups whose particular interests are largely and repeatedly neglected and in the medium and long terms can have a negative effect on the trade union's ability to mobilise and assert its will.

A current example is the GDL. Up to 2002 it was the traditional engine drivers' trade union. Since then it has been trying, within the framework of strategic development, to extend its organisational domain and also to represent train crew personnel who previously had been represented mainly by other trade unions (GDL 2007). GDL's first independent collective agreement, signed in 2008, applied solely to engine drivers; it did not represent the single train crew collective agreement that Deutsche Bahn was originally aiming for.

Excluded from this collective agreement, after heated discussions, were, among others, the shunting engine drivers, who are organised mainly by Transnet and EVG, so that from the GDL's standpoint strike action could not be launched with any prospect of success (Schell 2009: 175, 189). Based on this organisational division other demarcation conflicts were "accidents waiting to happen", and indeed did transpire from 2014 onwards. The GDL's goal is still the conclusion of an "independent collective agreement for all train crew" of Deutsche Bahn, as well as "to lead collective bargaining for train crew in all railway companies"; in other words, across the board, even among non-federally owned railways.

External observers are sceptical: in the GDL "engine drivers are in the majority, even though the association opened itself up a few years ago to all train crew, for tactical reasons. However, GDL members are few and far between among train guards. This is primarily due to the fact that the GDL does not represent these workers in collective bargaining and is unwilling to grant them decision-making rights. All decision-making positions lie exclusively with (former)

³¹ Among the private railway companies various collective agreements apply not only generally, but also for the same group of employees, and at Deutsche Bahn also for long-distance buses. To that extent differentiation between working conditions is increasing not only within Länder, but also within individual branches.

³² As a result of the liberalisation of the previously protected national long-distance passenger train market more competition is likely over the long term with private, not only regional providers, which already have their own association and conduct collective negotiations independently. The liberalisation or opening up of private long-distance bus lines in 2013 has resulted in more competition not only as regards ticket prices, but also wages and other working conditions. The interest representation of employees in these new branches is weak.

engine drivers and according to the executive committee a change in this practice is not foreseen as things stand" (Schroeder et al. 2011: 244).

After other proposals proved unable to win majority support, from 2008 a common basic collective agreement regulated the general working conditions (such as holidays or retirement benefits) of all employees; apart from that there were function-specific separate supplementary collective agreements (on income and working time) for individual groups. The so-called foundational collective agreement concluded in 2007 was supposed to enable a selective demarcation of competences and clarify the "conflict-free and consistent" subsumption of the separate collective agreement in the overall collective bargaining structure. The GDL was supposed to negotiate solely for the engine drivers, the EVG for the other employees (Kalass 2010). The management of Deutsche Bahn made the conclusion of this agreement in 2008 a prerequisite of the signing of the already negotiated wage agreement. A key point of dispute was the assignment of around 3,000 shunting engine drivers and the engine drivers at DB Zeitarbeit GmbH.

The agreement only briefly calmed the demarcation conflict. After it expired mid-2014 the latent conflicts resumed because the agreed demarcations of functional groups were no longer adhered to. The Bahn management refused, on the grounds that it did not want to jeopardise "industrial peace", to conclude separate collective agreements with the two trade unions for the same group of employees. The GDL, with reference to rights protected in the Basic Law, insisted on the option of concluding an independent agreement, thus ultimately aiming at a separation of the train and infrastructural operations.

The Collective Bargaining Unity Act adopted in spring 2015 provides, as already mentioned, that these conflicts be resolved in accordance with the "workplace majority principle". This procedure means that in the case of collective bargaining conflicts the GDL can count on a majority of the relevant occupational groups in only a small number of the around 300 establishments of Deutsche Bahn. The close cooperation between trade unions recommended by the Act is somewhat improbable, given the state of their relations, and labour disputes may well increase.

During the ongoing industrial dispute between Deutsche Bahn and the GDL, Deutsche Bahn and the EVG, in parallel but separate negotiations, concluded a collective agreement in spring 2015 for the 100,000 or so EVG members, with no need for the strike action threatened by the EVG. Another collective agreement covered – in contrast to the previous agreements concluded by the GDL – the engine drivers

organised by the EVG. The main point of controversy between the two trade unions, as already mentioned, is responsibility for, among other things, the group of around 3,100 engine drivers, most of whom are organised by the EVG. The collective agreement concluded between Deutsche Bahn and the EVG classifies this group in the Deutsche Bahn collective bargaining structure and brings the new occupational profile of transport logistics operatives within the framework of collective bargaining. A special termination right in the form of a revision clause has been agreed in case collective agreements concluded later on are not conflict free; in other words, include different conditions for the same employee group.

After nine strikes in one collective bargaining round, as well as a twice prolonged arbitration procedure a complicated conciliation process took place between Deutsche Bahn and the GDL, formalised in a total of 16 collective agreements. After the restoration of "collective bargaining peace" or the squaring of the circle with the help of the two arbitrators there is – as described in more detail on the website³³ – only a self-proclaimed winner: the tangible results of the federal framework collective agreement for trains (*Bundesrahmentarifvertrag Zug* or "BuRa-ZugTV") – such as a one-off payment, wage rise – are identical to those of the collective agreement previously concluded (without strike action) between the EVG and Deutsche Bahn.³⁴ Thus apply what Deutsche Bahn has always demanded be established as a principle, namely the same "consistent regulations" on working conditions for the same occupational groups, regardless of trade union membership, without substantive deviations that (could) lead to the feared splitting of individual groups of employees. The GDL, for its part, can point to certain separate improvements (such as easing workloads by reducing overtime, working time reductions and new recruitment of engine drivers and train guards). The GDL has seen its main demand for separate negotiations for other groups of employees (such as train guards and shunting engine drivers and the whole train crew) met. Nevertheless, there exist, despite this formal concession by Deutsche Bahn – and the still contentious trade unions – in substantive terms no (company) collective agreements with deviating and thus conflicting group-specific regulations; the GDL had always insisted on this option.

Whether this classic formulaic compromise has sustainable results or marks the start of a "new social partnership", as the two arbitrators conjecture, remains to be seen, given the different interpretations of the collective bargaining parties. The mutual trust necessary for the development of reasonably stable, long-lasting cooperation is not – or at least no longer – in evidence either between the trade unions or between the associations on both sides after the extensive strike action and difficult consensus-building processes. Such as there is can only be built up (again) over the long term. To put it another way, the already mentioned option, which exists in principle, of concluding a cooperation agreement is improbable in this case, given recent experiences.

The provision that in future in the event of a collapse in collective bargaining negotiations an arbitration procedure can be instigated not only by mutual consent, but also at

³³ www.deutschebahn.com/de/presse/themendienste/8254322/201409_tarifverhandlungen.html and <http://www.gdl.de/>.

³⁴ The EVG would like to push through the (for 2018) agreed shortening of weekly working time in its next (taking place in 2016) collective bargaining round. Options for an internal model of pattern and follow-up negotiations for the railways may emerge that would lead to very similar or even identical agreements on the part of different trade unions. Some economists have expressed fears of mounting demands, without providing any evidence. In fact, an informal variant of »collective bargaining unity« would be achieved; close synchronisation of negotiations would not be necessary.

the behest of one party is likely to prove extremely important. In contrast to collective bargaining negotiations, during arbitration, as the current example illustrates, a balance can be struck between different demands through the intervention of the arbitrators and the lowest common denominator can be reached so that all parties can then present themselves as winners to their members and the general public or establish a *modus vivendi* with whatever outcome has been declared acceptable. Furthermore, although it would still be possible for a party to reject an arbitration award it is improbable that this option would be exercised. Taking into consideration this altered institutional environment and the additional options of an arbitration procedure Deutsche Bahn's explicit assurance – unexpected given the course of the dispute – that the Collective Bargaining Unity Act (up to 2020) does not apply is understandable (the GDL's so-called long-term guarantee).

6

OUTLOOK

Summarising the problems of collective bargaining unity and plurality, one might say that opportunity structures are changing for the umbrella organisations of the collective bargaining parties, while their own interests are unchanged. In a political science perspective it virtually amounts to an object lesson on the question of which or whose interests can be articulated through activities such as lobbying to the extent that they can exert political clout and can be asserted. The redefinition of one's own particular interests as general or public interests is just as much a necessary condition for the success of this project as the instrumentalisation of the public or the media as multipliers of information and opinions. A "balance of power" in the sense of the acceptance of pluralistic interest mediation evidently does not exist. Calculations about corporatist interest mediation won't help with our analysis either. The framework for corporative action is set by the coalition agreement of the Grand Coalition, whose political logic obviously commands that its agreements be processed successively in the course of the legislative period.

Current developments should give neoliberal and other market-fundamentalist critics pause for thought. They have been demanding strict decentralisation or even relegation to the company level of the established system of branch or nationwide collective agreements, replacing it with workplace or company agreements (cf. Berthold/Stettes 2001). The protection, regulatory and peace functions of (association) collective agreements are becoming clearer than before and evidently represent an important collective good.

To put it another way, the capacity for coordination across the economy of the collective agreement system, oriented towards inter-company sectoral agreements – that is, of negotiations with different employers as one of its key structural characteristics – can be changed over the long term through the competition between small occupational associations in only a few branches at best. The demands for the "abolition of the collective bargaining cartel" considerably underestimate its positive effects, as well as the risks of trade union competition, including emerging demarcation conflicts between trade unions or the danger of efficiency losses.

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