

On the Empirical Analysis of Staff Councils – Structural Data and Problems of Interest Representation

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Labour relations in the public sector have long been one of the most seriously neglected areas of research in the field of economic and social science. This deficit is particularly apparent at the level of the economic institution or “establishment.” While there is abundant information on the activities and problems of works councils, we know almost nothing about staff councils and the representation of employees at the level of public sector establishments. This article aims to close this gap by presenting a range of basic empirical findings relating to staff councils, particularly with regard to problems in the area of the representation of interests. Staff councils operate within specific legal frameworks and are confronted with special kinds of problems.

1

Introduction and problem definition

1.1 INTRODUCTION

The structure of labour relations in Germany is similar to that in the majority of Western European countries: they are of “dual” nature and therefore fundamentally different from the “monistic” structures encountered, for example, in the Anglo-American world. The interest-representing bodies at the company and sectoral level – in other words, the works council and the trade union – are separate in both formal and legal terms, although the two often depend on each other, and despite the fact that there are frequent examples of de facto cooperation. The regulatory systems and their procedures differ markedly. The instruments for the representation of interests at company level are exclusively of the “peaceful” kind and strictly geared towards “cooperation in good faith”, while collective bargaining at the sectoral level always includes the possibility of strikes. Works councils represent the interests of all employees, whereas membership in a trade union is voluntary.

As in the majority of comparable countries, the institutional and legal principles of labour relations apply not only to the private sector but also to the entire public sector. In the latter sector, bargaining activities at the “sector level” are based on constitutionally guaranteed bargaining auton-

omy and the Collective Agreements Act – as they also are for all employees in the private sector. However, these instruments apply only in the case of white- and blue-collar employees. In line with the prevailing legal principles (“traditional principles of career public service” in accordance with Section 33 IV of the Basic Law), civil servants do not enjoy rights of collective bargaining including strikes. Instead, the umbrella associations of their interest organisations – the German Civil Servants’ Association (Deutscher Beamtenbund) and the German Trade Union Federation (Deutscher Gewerkschaftsbund) – possess participation rights in the preparation of all regulations affecting civil servants, and these rights are guaranteed by the Public Service Acts. To this extent, the formal dividing line is not between private sector and public sector but rather within the public sector.

At the level of the “company” or office (e.g. government authority or establishment), representation of employee interests in the public sector is not governed by the Works Constitution Act (1952, 1972, 1988, 2001) as in the private sector but by a number of special regulations: the Federal Staff Representation Act (1955, 1974) for federal government employees, and the Federal State Staff Representation Acts for employees of the *Laender* and municipalities (for historical information, see Ortwein 1983; Kübel 1986; Kippels 1990).¹ Although the provisions of these employee representation regulations are generally modelled on the Works Constitution Act (in areas such as elective principles, cooperation principles and the principle of co-

operation in good faith, the peace obligation and/or the strike ban, and the representation mandate), they constitute an independent legal and procedural system with major differences compared to the Works Constitution Act and possess a number of special characteristics (see Kippels 1990; Kossens 1996 for more detailed information)². In both sectors of this highly “legalised” system, these provisions are

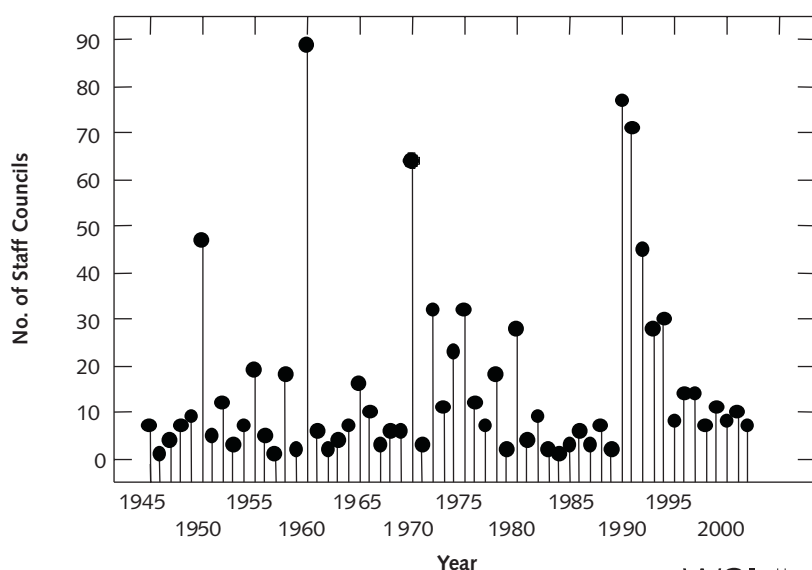
¹ For constitutional reasons, there is no real equivalent in the public sector to the practice of codetermination in the private sector – in other words, the participation of employee representatives in the decisions of Management Board and Supervisory Board. There are also no explicit participation rights of the staff councils in “economic matters”.

² The most recent amendment of the Works Constitution Act in 2001 has not led to any corresponding changes in the participation rights laid down in the staff representation acts for public sector employees (at least to date).

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Fig. 1: Year of creation of staff councils



Source: WSI Works and Staff Council Survey 2002 (3rd Survey).

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based in law and cannot be altered by means of collective bargaining.

In contrast to the situation in other countries, particularly those in the Anglo-American world (the most recent comparative studies are *Bach et al.* 1999; *Dell'Aringa et al.* 2001), labour relations in the public sector have long been seriously neglected by industrial relations research in Germany, and this neglect is hard to justify on either theoretical or practical grounds. On one hand, differences in the general legal and institutional context result in substantial differences in the “model” of labour relations. On the other hand, about 14 % of all dependent employees are employed in the public sector despite the considerable decline in public-sector employment since the early 90s (1991: 6.7 million, 2001: 4.9 million), and this makes the public sector by far the biggest employer in Germany.³

On closer inspection, it is apparent that this neglect of the public sector is unevenly “distributed” between the two levels of interest representation: several studies do in fact exist for the “sectoral” level (Keller 1983, 1993). In contrast, the level of the economic institution or “establishment” is still more or less uncharted territory – if we disregard the standard commentaries (Altwater et al. 1990; Söllner/Reinert 1993; Ilbertz 1995), several exclusively legal articles focusing on specific problems (Kübel 1986; Ossenbühl 1985), and a few older monographs (Faber 1979 comparing

France and Germany; Kübler 1981 on municipal administration in Baden-Württemberg). The Report of the Commission on Codetermination (1998), which has been the subject of much public discussion during the last few years, also fits this pattern of almost total neglect.⁴ A more recent article merely states the following: “Empirical surveys on codetermination in the public sector are thin on the ground” (Dopatka 1996: 229).

1.2 PROBLEM DEFINITION

Parallel to its 3rd survey of works councils, the WSI also conducted a survey of staff councils, providing for the first time a broadly empirical basis for the analysis of selected topics in the area of “establishment-level” labour relations and the representation of interests at this level. The data record comprises detailed answers from a total of 1,277 staff councils from various segments of the public sector in the broader sense (general administration, justice, schools, social welfare, healthcare, public sector enterprises etc.). The data record is based on a written survey conducted in the summer of 2002. The respondents were selected from collections of company data banks and address files. The aim was not to generate a random sample but to achieve full coverage in the survey. Due to the criteria used for selection, it is not possible to determine the coverage rate of the universe

of staff councils. The survey comprised entities with more than 5 employees – covering only around 44 % of all public sector establishments but roughly 90 % of all employees (Schäfer 2001: 66). The design of the sample does not allow us to calculate return rates; 79 % of the replies came from west Germany and around 21 % from east Germany.

In the following sections, we will first present (section 2) a selection of basic structural data on staff councils (including details of election turnout and the group principle, gender representation, density ratios, work releases and external experts) that extends beyond the typical “black box” of economic analysis. We will then profile (section 3) selected key areas and problems of interest representation by the staff councils (important topics, modernisation of the public sector, establishment agreements, support from the trade unions). Our aim is not to provide a systematic comparison between the sectors or between works councils and staff councils (Dorsch-Schweizer/Schulten 2001). Occasional comparisons to the situation in the private sector aim to facilitate analysis on the part of the authors and comprehension on the part of the reader. As there are (still) no longitudinal surveys for the public sector, comparisons with the private sector are the only realistic point of reference for the interpretation of the findings.

2 Structural data

Staff councils are long-established as bodies that represent the interests of employees vis-à-vis the executives in charge of public sector establishments. The only “boom” in the creation of these bodies was seen in the early 90s, when these “company-level” entities of “collective voice” were elected for the first time in east Germany.

³ Despite assumptions to the contrary and public pronouncements, this means that Germany is in the middle of the “league table” of all OECD member states (Gregory/Borland 1999).

⁴ For logical reasons, the current controversial debate – mainly among business experts and economists – over the economic consequences of the actions of works councils (summarised in Dilger 2002) is not mirrored in the public sector.

2.1 ELECTION TURNOUT, GROUP PRINCIPLE

According to the figures provided by the staff councils, the *election turnout of employees* is relatively high at 77 % (mean value based on a median of 80 %). This suggests that employees in the public sector recognise or legitimise this central institution for interest representation and that they view the work of the staffs councils as being important. As in the private sector (Niedenhoff 2003: 11), the election turnout depends on the size of the “establishment”; in other words, it declines in almost direct proportion to the number of employees. This finding indicates that voter mobilisation is more successful in smaller groups of employees than in establishments with higher numbers of employees. This stable finding certainly corresponds to the standard theories on the problems associated with the creation of “collective goods”; it is therefore realistic to expect a higher level of “free rider” behaviour or restraint in making contributions to collective goods in the bigger groups (Olson 1968). It is also interesting to note that election turnouts are higher in east Germany than in west Germany.

For many years, works council elections in the private sector were subject to the *group principle*. According to this principle, blue-collar employees and white-collar employees elected their representatives in separate ballots – unless the two groups had previously decided in separate and secret ballots to hold a joint election. It was not until the Works Constitution Act was amended in 2001 that this provision was abolished, paving the way for joint elections in all cases.

Section 17 of the Federal Staff Representation Act stipulates separate elections even more strictly than the older versions of the Works Constitution Act; in other words, the election of the staff council (including the make-up of its managing committee) in the public sector is still governed by the group principle along with provisions for the absolute protection of minorities and the proportional make-up of the representative body. This is “designed to ensure that the legally differing and sometimes opposing interests of the groups can be promoted in the proper fashion by separately elected representatives” (Kübler 1981: 47). This principle, which applies not only to blue-collar and white-collar employees but also,

Table 1: Election turnout based on number of employees and location in west or east Germany (mean values)

No. of employees	West	East	Total
Up to 50	88.4	92.2	89.7
51 to 100	81.7	84.8	82.2
101 to 200	76.4	80.1	77.1
201 to 500	72.1	73.7	72.5
Over 500	62.4	60.3	62.0
Total	75.9	79.3	76.6

Source: WSI Works and Staff Council Survey 2002 (3rd Survey).

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and in particular, to civil servants on the basis of the already mentioned “traditional principles of career public service” or the resulting “dualism of employment relationships”, can lead to “a priori distribution of all seats on the staff council and therefore to over-representation of the weaker groups” (Däubler 1998: 920).

The constellation that is assumed to be the norm or the standard case in the staff representation laws – namely separate elections based on status groups – is indeed still the dominant practice (more than two in three staff councils).⁶ This suggests that the majority of employees still view the traditional legal status differences as being important – or at least that they do not explicitly call them into question. If we base our analysis not on the public sector establishment but on the number of employees, we find a similar relationship: the higher the number of employees, the less frequently joint elections take place. This means that a high number of employees believe that their own or their group-specific interests should be secured by electing representatives from their status group.⁷

The policies of the trade unions and interest associations – or the competition between the two – are aimed in the same direction. “In reality, the group principle itself is a “legal” answer to the competition between trade unions and interest associations. It favours organisations that are exclusively or chiefly devoted to a particular group and that – although they would have no chance of gaining an overall majority – are able to attain a predominant position in their limited field of operation due to the decision-making prerogatives of group representatives on group-related issues.” (Feldmann 1982: 209–210)

These positions, which are manifested in the decisions at the staff council elections, are also in line with the legal differences that continue to exist even after several decades of controversial debate over the standardisation of public service regulations (Studienkommission 1970; Keller

1983: 303–324); it is fair to assume that the special status of civil servants is of particular significance in this context. This constellation, characterised by a high level of heterogeneity due to the absence of any kind of uniform employee status, has consequences for the representation of different interests vis-à-vis the management of the establishment in question. As it represents all the employees, the policy of the staff council not only has to aggregate – and therefore mediate between – differing interests but also has to promote highly group-specific interests vis-à-vis the management of the establishment.⁸ It is generally more difficult to achieve uniformity of interest representation policy than in the private sector; and this differentiation of interests and group egoism can have a negative impact on the effectiveness of interest representation.

2.2 GENDER REPRESENTATION

Various studies on the private sector show that, relative to their percentage share in the overall workforce, women are under-represented on the interest representation bodies at company level (Niedenhoff 2003, among others). This is why the 2001 amendment to the Works Constitution Act

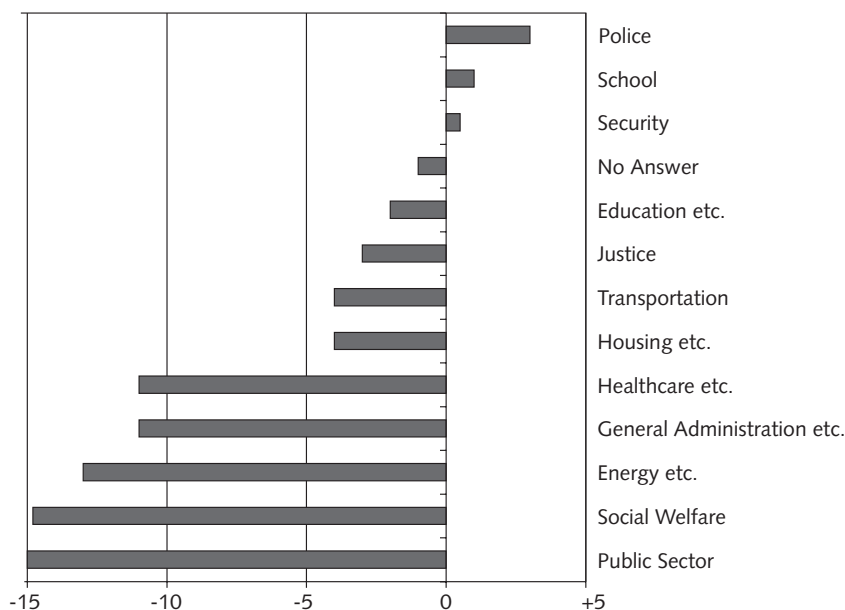
5 All results presented here are based on the unweighted data records.

6 It is also interesting to note that the election turnout in joint elections is slightly higher than in separate elections. Moreover, the higher the percentage of blue-collar employees in the overall workforce, the higher the election turnout (a similar relationship is found in Kübler 1981: 48–49, 51).

7 According to Kübler (1981: 15, 57), employees primarily view the staff council as a “reinsurance institution” for personal issues relating to the workplace.

8 Within the context of “absolute group protection”, the Federal Staff Representation Act even “assures the individual groups the right to determine the representatives who are active on their behalf as well as substantive decision-making powers in their own affairs more or less regardless of the size of the group” (Kippels 1990: 81).

Fig. 2: Over-/under-representation of women on staff councils



N.B.: Differences of proportion of women on staff councils and proportion of women in different sectors, e.g. proportion of women in a given sector 10 %, proportion of women in staff councils of this sector 5 %, then difference is -5 %.

Source: WSI Works and Staff Council Survey 2002 (3rd Survey).

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Table 2: Staff council chair by gender and area

Area of establishment	Gender of staff council chair		No of staff C.
	male in %	female in %	
Police	95.79	4.21	95
School	48.33	51.67	60
Other public security and order	83.33	16.67	36
No answer	75.16	24.84	157
Other education, science, research and culture	60.61	39.39	66
Justice	59.43	40.57	106
Transport and communications	92.00	8.00	25
Housing, spatial planning, municipal community services	71.43	28.57	7
Healthcare, sport, recreation, environmental protection	66.67	33.33	102
General administration, political leadership	67.46	32.54	461
Energy and water sector	86.67	13.33	15
Social welfare	69.01	30.99	71
Public sector enterprises	96.30	3.70	54
Total	71.08	28.92	1255

Source: WSI Works and Staff Council Survey 2002 (3rd Survey).

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stipulates that the gender that is in the minority in the workforce must enjoy at least proportional representation on the works council.

The percentage of women among staff council members (approx. 36 %) does not correspond to their percentage share in the workforce (approx. 47 %); these figures are in line with expectations and general experience (Kübler 1981). An analysis of different employment segments within the public sector shows wide variations in over- or under-representation (Fig. 2).

As is not surprising, the discrepancy is even more marked when it comes to staff council chairpersons, who can be consid-

ered “firsts among equals” as well as the focal actors on the councils; the figures show that only 28 % of staff council chairpersons are women. The probability of the staff council chairperson being a woman increases almost in direct proportion to the percentage share of women among staff council members overall. If we take a closer look at the data on under-representation, we find considerable variations in the different status groups (female blue-collar employees 7.4 %, female white-collar employees 58 %, female civil servants 28 %).

The above figures underline the continuing need for active measures in the area

of gender equality of the kind that have been implemented – primarily through legal regulations, of which the Equality Implementation Act of 2001 was one of the more recent – in various segments of the public sector since the 80s. Overall, the employment structures and labour markets in the public sector are complex networks of both vertical and horizontal segregation (Keller/Henneberger 1999; Bach/Winchester 2003).

2.3 REPRESENTATION OF YOUNG EMPLOYEES AND APPRENTICES

As in the private sector, specific representative bodies for young employees and apprentices also exist in the public sector; the size of these bodies depends on the number of young employees and apprentices (Section 59 of the Federal Staff Representation Act). On the whole, these representative bodies exist in only a relatively low percentage of establishments (32 %); the bigger the establishment, the more likely they are to exist. It is also worth noting that half of all establishments have no apprentices. The unfavourable overall age structure in the public sector, the already mentioned decline in the total number of employees, and the low level of new recruitment are reflected.

2.4 DENSITY RATIOS

It is generally agreed that the density ratios of company-level representatives are an indicator for the scope and intensity of the relationship between company-level and sectoral actors in the “dual” system of labour relations. From comparable studies on the private sector (Niedenhoff 2003), we know that density ratios of works councillors have been considerably higher than that of employees in all elections since the 70s. As in the case of the works councils, the question of membership in a trade union is also of relevance for the staff councils. It should be taken into consideration that density ratios among employees in the public sector are traditionally far higher than in private sector; the current level (at over 60 %) is more than twice that in the private sector, where levels have declined steadily since the early 90s (Ebbinghaus 2002).

The principle of the industrial trade unionism that has applied to nearly all of the private sector since the phase of reconstruction after World War Two does not ex-

ist in the public sector. When considering the competition between unions, the existence of two umbrella federations makes it necessary to explicitly distinguish between “DGB trade unions”, “other trade unions” and “non-organised” within the public sector. The merger of five formerly independent trade unions, including the formerly independent DAG union, to form the “Vereinte Dienstleistungsgewerkschaft” ver.di in the spring of 2001, has rendered the often fierce competition between the DAG and several DGB trade unions (in particular the unions for Handel-Banken-Versicherungen and Öffentliche Dienste, Transport und Verkehr) more or less obsolete. In various sub-areas of the public sector, however, there is still competition not only between DGB trade unions (such as ver.di and Gewerkschaft Erziehung und Wissenschaft) but also and above all between DGB and DBB member organisations.

At 57 %, the density ratio of staff councils in DGB trade unions is lower than that of the works councils in the private sector; moreover, the unionised staff councils are distributed fairly unevenly among the various public service segments.⁹ “Other trade unions”, which – following the integration of the DAG union in ver.di – generally means the DBB member organisations, still play an important role as they account for around 18 % of all staff council members. However, these organisations are not just focused on civil servants but also on a relatively small number of staff councils or sub-areas of the public sector; the dominant principle of “group election” in both legal and de facto terms promotes this specific segmentation by creating “strongholds”. This finding also reflects the fact that the DBB is the only umbrella organisation that was able to increase its membership during the 90s, a decade marked by a serious overall decline in membership in all the other organisations (Pege 2000).

All in all, the percentage of “establishment-level” interest representatives who are trade union members is around as high (over 70 %) as in the private sector; however, the distribution of members among the umbrella federations differs due to the consequences of the prevailing “plurality of trade unions”.¹⁰ Furthermore, there are no recognisable differences between east and west Germany. The positive correlation between density ratios and number of employees is particularly marked ($r = 0.64$).

Finally, the percentage of non-unionised staff councils¹¹ is lower than in the private sector but nevertheless quite high in absolute terms at just under 25 %, ¹² and this means that the frequently heard claim that there is some kind of “symbiosis” of staff councils and trade unions (or the view of staff councils as “remote-controlled branches of the trade unions” (Feldmann 1982: 35) is anything but justified.¹³ We would expect this rather “loose” relationship between staff council and trade union to be reflected in the form and scope of trade union support for the work of the staff councils: in other words, this support ought not to be as substantial as in the private sector.

2.5 RESOURCES: WORK RELEASE AND EXTERNAL EXPERTS

Alongside qualification levels, which can be improved and extended through training and further education courses, *work release* for staff council members is key to the resources of the staff council and therefore also central to the intensity and quality of the politics of interest representation. As in the private sector, the legally guaranteed number of work releases increases with increasing number of employees (although the rate of increase, as in the private sector, is lower than proportional) in accordance with Section 46 of the Federal Staff Representation Act: there is one release from work between 300 to 600 employees, two for 601 to 1.000, then one additional release up to 10,000 (from 10.000) employees per 1.000 (per 2.000) employees. This rule means that the number of work releases in the public sector – and therefore the “representation density” – is lower than in the private sector following the most recent amendment of the Works Constitution Act, and this restricts the human resources available for the work of staff councils and therefore limits the efficiency of interest representation activities.

Within this overall legal framework, we also need to differentiate between the various forms of work release – “full release” (approx. 26 %), “partial full release” (approx. 28 %) and “partial release according to requirements” (approx. 46 %). Work release is generally based on the already mentioned group principle and can be permitted to allow staff council members to perform special duties (in areas such as occupational safety and health or data pro-

tection). In general, it can be assumed that “the complex nature of the public sector does not as a rule permit part-time handling of the problems faced by a staff council” (Faber 1979: 184).

At first glance at least, it is surprising to note the low percentage (around 25 %) of full-time work releases – the only form of release that would allow a high degree of professionalisation of staff council activities. The overall level of work release is also low: around 65 % of all staff councils are in public sector institutions with fewer than 300 employees – in other words, in establishments which do not enjoy legally guaranteed work release entitlements. Moreover, voluntary work releases that extend beyond the legally required minimum allowances are more or less non-existent. On the contrary: it is even possible to speak of latent under-utilisation of the legally secured options for work release (Kübler 1981: 70).¹⁴ A similar trend was observed at

9 The figures are probably (slightly) distorted in favour of the DGB unions, as the design of the survey means it is likely they were polled with a higher-than-proportional frequency. It should also be noted that the figures do not allow us to make any statements on the rivalries between the various trade unions in the DGB federation.

10 “Consequently, the tensions within the staff councils are more pronounced than within the works councils, with the result that – although this is in contradiction of the prevailing legislation – we can often observe the formation of ‘factions’ across group borders.” (Kippels 1990: 110)

11 There are no indications of the different density ratios among “chairpersons” and “members” that we frequently find in the studies on works councils.

12 Given the available data, it is not possible to verify the plausible supposition based on surveys of the private sector that staff councils that are not unionised at the time of their election subsequently join a trade union during their period in office to secure support from the union.

13 “In view of the data, the trade union influence on the work of staff councils must be considered fairly modest. The only places where there are closer links are in the bigger cities. But even here, the staff council chairpersons do not see themselves as the ‘extended arm’ of the trade unions.” (Kübler 1981: 63)

14 “The reasons for this are associated first and foremost with the staff councils themselves, as they frequently do not apply for work releases (for a variety of reasons); where they do apply for work releases, these applications are often handled restrictively by the establishments in question. Work release is generally focused on the chairperson of the staff council. The extension of work release to more than one member of the staff council was only observed in a few of the bigger cities.” (Kübler 1981: 74)

the 2002 works council elections in the private sector (Behrens 2003).

Only around one in four (26 %) staff councils say that they *call on the services of external experts*, while a substantial majority (64 %) answered this question in the negative. On the whole, the staff councils seldom make use of these resources. The frequency with which they do so is clearly dependent on the way these services are financed: if the employer pays for the external experts, the staff council tends to draw on their services more frequently.

2.6 CONTACT FREQUENCIES

One of the main structural characteristics of staff councils is still the contacts they maintain with other “actors” – in other words, with the management of the public sector establishment as the representatives of the “employer”, with trade unions as sectoral interest representation, and with the employees. Meetings between the staff councils without the involvement of the management of the institution in question take place once to twice a month (mean value of 1.7); the frequency of these meetings increases with size of staff council. This indicates that the higher the number of employees,¹⁵ the greater the need for communication and coordination within the staff council.

The *frequency of contact* with the management of the establishment can be seen as an indicator for the form and/or efficiency of interest representation by the staff council; according to the legal regulations (Section 66 of the Federal Staff Representation Act), both sides should meet for consultation at least once a month. Compliance with this general requirement geared towards ensuring “cooperation in good faith” is confirmed by over half of respondents (55 %). More frequent meetings or higher contact densities that could indicate more efficient or more effective representation options were hardly found to exist at all.¹⁶ Surprisingly, the frequency of joint meetings also shows no increase with increasing size of staff councils or increase in the number of employees. In other words, the legally required minimum frequency is generally also the maximum frequency of official contact between the two sides. It must be said, however, that it is not uncommon to find informal, personal or phone contacts at individual level in the run-up to the formal decision-making

process. These contacts are used to gauge and pre-negotiate possible concessions as well as to intensify and improve the general cooperation between staff council and management of the establishment (Faber 1979; Kübler 1981).

3

Problems in the area of interest representation

According to the relevant literature, the analysis of issues dealt with in the field of interest representation should differentiate between *areas* (social, personnel and economic matters) and *intensity* of participation rights (pure information, participation and codetermination rights as well as the right to be heard). However, these in some ways “traditional” differences based on observation of the private sector only serve as a rough framework for analysis of the public sector and are of only limited significance within the context of empirical analysis.¹⁷ Firstly, there are no participation rights in economic matters in the public sector, and codetermination is limited when it comes to personnel issues affecting civil servants due to the principle of loyalty towards the “employer”. Moreover, and as we show below, we can observe de facto changes in the topic areas in the public sector – in other words, the gap between the formal, legal provisions and the actual content of “codetermination” has been increasing to a considerable degree. Following the amendment of the Works Constitution Act, modifications should also have been made to the staff representation acts to adapt the regulations to the changed and highly differentiated situation.¹⁸

One of the indicators that have been frequently used in recent years to describe the differences in labour relations are *coverage rates*. These rates provide information on the percentage of companies or employees who are covered by company-level or sectoral interest representation bodies. Comparative studies – focusing, however, exclusively on the private sector – have shown clear differences both between and within national systems (Traxler et al. 2001; Bamber/Lansbury 2003).

The available studies¹⁹ show that “company-level” coverage rates are far higher in the public sector than in the private sector, where they have been in decline since the

mid-80s; at the current time, less than half of all employees are still represented by works councils (Addison et al. 2002). Due to the relatively high “establishment-level” coverage rates in the public sector, the “white spots” and therefore the threat to the proper functioning of the dual systems are relatively insignificant. The few gaps that do exist are mainly found in the small establishments.²⁰ On the whole, the problems of this kind that are primarily found in small and medium-sized companies in the private sector are not observed in the public sector.

3.1 AREAS OF INTEREST REPRESENTATION

Which topics and areas relating to the representation of employee interests – and which developments and problems – have preoccupied the staff councils in recent years? The answers to this question show a

15 Space considerations prevent us from looking at the latter topic in greater detail below.

16 Almost 40 % “no answer given” is naturally difficult to interpret; this could indicate a tense relationship.

17 In the public sector, Faber (1979: 72 et passim) and Feldmann (1982: 108 et passim) differentiate between personnel, organisational and social matters.

18 In response to the “introduction and application of new technology”, it was argued at the end of the 80s that the staff representation acts “had come into force at a time when it was not possible to foresee the nature of modern technology and the associated consequences of this technology” (Ilbertz 1987: 288).

19 Addison et al. (2002) estimate that almost two in three establishments have a staff council and that nearly 90 % of all employees are covered by these councils. Schäfer (2001: 67) says that it can be assumed that a staff council exists in nearly every establishment in the public sector. The report of the Commission on Codetermination (Bericht der Kommission Mitbestimmung 1998: 51, similar p. 10) goes so far as to say that “all employees in the public sector are represented by organs set up in accordance with the staff representation act at national and land level”. Based on the latest waves of the IAB establishment panel, Ellguth (2003: 195) estimates that around two in three public sector establishments have a staff council and that over nine in ten employees work in the corresponding establishments.

20 There should in fact be no representation gaps at all, as Section 12 of the Federal Staff Representation Act states that establishments that are not capable of creating staff councils should be assigned to a neighbouring establishment in coordination with the representatives at the relevant level to guarantee that employee interests are represented in all cases.

clear focus on a small number of key issues.²¹ Clearly at the top of the list is “personnel cutbacks” (approx. 34 %), followed by “changes in the area of work organisation” (21 %), “deterioration of in-house climate” (18 %), “measures to modernise administration routines” (14 %), “privatisation” (12 %) and “phased part-time retirement” (10 %).²²

Even jobs in the public sector are by no means as “secure” as is often suggested by the public debate. Wide-ranging personnel cutbacks have been implemented since the early 90s, due to such measures as privatisation (and not only that of the German rail and postal services but also privatisation at nearly all levels and in various areas of the public sector) as well as spin-offs and outsourcing. In contrast to the situation in the private sector, this process, which is mainly but not exclusively focused on east Germany, does not result in direct redundancy but instead tends to take the form of cutbacks through not filling positions that become vacant. Consequently, the staff councils list “personnel cutbacks” as the most important area of interest representation at the current time.

Detailed comparison of the answers shows only marginal differences between west and east Germany; staff councils in east Germany record more frequent requests for “social plans/ balancing of interests”, “issues of dismissal protection” and “phased part-time retirement”. Problems in the area of phased part-time retirement are more widespread in the public sector than in the private sector (Klammer/Weber 2001: 105). In the public sector, there is no focus on particular sub-sectors, with the exception of “other education, science, culture, research” and “justice”. In west Germany, the previously favourable age structure of the workforce is continuing to deteriorate, particularly due to the recruitment strategies of public sector employers in the late 60s and early 70s and the lack of new recruitment in subsequent years. Two of the most noticeable features in east Germany are the degree of relative “overmaning” as well as the poor financial situation.

3.2 “MODERNISATION OF THE PUBLIC SECTOR”

We know from other studies (Killian/Schneider 1998a: 280), that staff councils have been trying since the 80s to enter into establishment agreements, the functional

Table 3: Developments and problems from the point of view of the staff councils

Problems	(1) No. of staff councils	(2) in % of cases	(3) in % of answers
Personnel cutbacks	438	34.3	11.4
Changes in work organisation	269	21.1	7.0
Deterioration of “in-house climate”	232	18.2	6.1
Measures to modernise admin. routines	183	14.3	4.8
Increased “pressure to perform”	182	14.3	4.8
Phased part-time retirement	151	11.8	3.9
Victimisation	133	10.4	3.5

N.B.: multiple answers were possible. Column (2) is therefore based on the percentage of cases and column (3) on the percentage of all answers. As not all possible categories are contained in the table, the figures do not add up to 100 %.

Source: WSI Works and Staff Council Survey 2002 (3rd Survey).

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equivalent of works agreements in private industry, to cushion the introduction of information and communication technologies. Since the 90s, measures have been implemented in various areas of the public sector (initially and primarily in the municipalities) (Greifenstein/Kißler 2000; Schneider 2002), and subsequently at national and *Laender* level relating to the “modernisation of the public sector” (Schriftenreihe 1993) in general and to “new public management” (Budäus et al. 1998; Naschold/Bogumil 2000) or “new steering models” (KGSt 1997) in particular. These measures underpin the importance of the actors at “establishment level”, but their increased importance is not accompanied by a trend towards decentralisation as in the private sector; rather, the system of highly centralised collective negotiations remained formally intact until 2003.

This process of fundamental reorganisation and restructuring results in major changes to the status and duties of interest representation bodies at “establishment level” (for details, see Killian/Schneider 1998a) and creates new qualitative and quantitative challenges for all those involved in “codetermination”. Staff councils, who can see themselves as either “modernisers” or “traditionalists” in the new framework for employee involvement, find themselves having to perform a difficult tightrope act, as the reform process makes new demands in the direction of “co-management”, and because there are “modernisation winners” and “modernisation losers” among the employees.

When asked about important problems and developments, the “deterioration of the in-house climate” is mentioned fairly frequently (scoring approx. 18 %). This shows that the “practice of cooperation in good faith aimed at ensuring performance of the duties of the public sector establish-

ment and serving the well-being of the employees” (Bieler 1993: 122) is not without internal differences of opinion or conflicts, although the “classic” conflicts of interest in the public sector between staff council and management are more or less non-existent. Seen from a longer-term perspective, we can assume “a decreasing basic consensus between management and staff representatives and an increase in the conflict readiness of the staff councils.” (Kübel 1986: 379)

How important are these economically motivated changes for the day-to-day work of the staff councils? Has their quantitative significance been realistically assessed on the basis of the few existing qualitative case studies (summarised in Killian/Schneider 1998b)? Answer categories that refer to the “modernisation complex” – without it always being possible to draw clearly defined dividing lines – feature frequently in the replies provided by the respondents: “changes in work organisation” scores 21 %, “measures to modernise administrative routines” scores around 14 %, followed by “introduction of new technologies” with approx. 11 %. It is therefore fair to assume that the problem areas outlined in the case studies are fairly widespread and they pre-occupy many staff councils.

21 Respondents were given a list of over 30 issues/ areas and were then asked to specify the “three most important problems”. The following figures refer to the specified alternatives without weighting based on rankings.

22 On the basis of evaluation of the findings of the present survey, we consider the hypothesis that “the public sector can be regarded as a special case where works councils are more or less part of the organisation and bureaucracy” (Addison et al. 2002: 5) to be simply wrong.

Table 4: Areas covered by establishment agreements

Establishment agreement on	No. of regulated areas	in % of answers	in % of cases
Working hours	561	36.0	66.6
Personnel issues	169	10.8	20.1
Work health and safety	111	7.1	13.2
Modernisation of admin. routines	108	6.9	12.8
Technology, work organisation	93	6.0	11.0
Salary categories, remuneration	85	5.5	10.1
Promotion of women's interests	84	5.4	10.0
Employment security	81	5.2	9.6
Performance provisions	67	4.3	8.0
Further training	58	3.7	6.9
Training	33	2.1	3.9
Other	109	7.0	12.9
Total	1559	100.0	185.2

N.B.: basis: 842 cases

Source: WSI Works and Staff Council Survey 2002 (3rd Survey).

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Table 5: Staff council assessment of support from trade unions

Support from the trade unions	At least one staff council member in a trade union		Total
	no	yes	
very good	6.43	11.35	10.75
good	32.86	38.45	37.76
satisfactory	26.43	30.28	29.81
adequate	16.43	10.26	11.01
inadequate	17.86	9.66	10.66
Total	100.00	100.00	100.00

Source: WSI Works and Staff Council Survey 2002 (3rd survey).

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3.3 ESTABLISHMENT AGREEMENTS

Alongside the participation rights of the staff councils on individual issues, there are also formal options and possibilities for the agreement²³ of general collective rules. The signing of works and establishment agreements is certainly the most frequent form of active exercise of participation rights and can supply information on the quality of interest representation by the staff councils as well as on the distribution of power between the management of the public sector institution and the staff council. It is also fair to assume that the more active and efficient staff councils will enter into a higher number of agreements that meet with resistance on the part of the employer or the management.²⁴ Compared to the situation in the private sector, however, it must be said that the provisions of the Federal Staff Representation Act contain only restricted options for making establishment agreements, and that the initiative rights of the staff councils are severely limited (Kossens 1996: 79).

Overall, the replies to the question concerning "particular activities" of the staff council when it comes to the signing of establishment agreements show a clear focus on a low number of areas, as was also found with the questions on developments and problems that preoccupy staff councils. 36 % mention "working hours"; the second

most common answer "personnel issues" is a long way behind at just over 10 %, followed by "occupational safety and health" (almost 7 %), "other" (almost 7 %, without any clear areas of emphasis), and "modernisation of administrative routines" (also nearly 7 %).

3.4 SUPPORT FROM THE TRADE UNIONS

As mentioned at the outset, company-level and sectoral interest-representing bodies, in other words works or staff councils and trade unions, remain formally separate within the "dual" system of labour relations, but there are certainly de facto points of contact between the two levels. Within the context of this "contradictory unity", the trade unions primarily provide a range of services for the company or establishment level.

A differentiated assessment of these services shows that the staff councils take a fairly ambivalent view of the support they receive. Half of all answers were in the range from "satisfactory" downwards. Contrary to what we might expect to find, there is no relationship between the percentage of union members on the staff council and the level of satisfaction with support services; neither are there any differences between east and west Germany. On the whole, therefore, there is evidence of major

inadequately addressed fields of action (technical, regional as well as topic-based) for trade unions with regard to the "establishment level".

In general, "we have to assume that the efficiency of interest representation is negatively impacted by inadequate knowledge of the technicalities of staff representation" (Faber 1979: 194). Do staff councils have particular expectations for different, possibly novel support services in areas such as qualification? Is it perhaps the case that the trade unions lack the necessary information on requirements as well as the resources and expertise to provide full-coverage services? With regard to the aforementioned problem of "modernisation of the public sector", we can say that if the "establishment-level" interest representation bodies "do not receive adequate assistance from the trade unions, the latter run the risk of ceding part of their traditional role, and this will lead to further decentralisation of labour relations in the municipal sector and hence in the public service sector as a whole. In the absence of an active policy geared towards providing assistance in the context of restructuring, the influence of the trade unions on reorganisation in the municipal sector will decline." (Kilian/Schneider 1998a: 284).²⁵

The list of areas in which the staff councils would like help from the trade unions is dominated by known problem areas – "modernisation of administrative routines" (49 % of answers), followed by "dismissal protection" (42 %), "restructuring" (42 %) and "working hours" (41 %).

²³ In both the private sector and the public sector, there is generally a serious information deficit with regard to the contents of these specific agreements. This is all the more surprising in view of the fact that all observers agree that the significance of these "mini collective agreements" has been increasing parallel to the decentralisation of labour relations.

²⁴ We cannot make any definitive statements on numbers but only on the topic areas. It is, however, possible to identify areas of "particular activity".

²⁵ As a reminder: since the late 80s, the former ÖTV union has also been trying to make a contribution towards the necessary reforms as well as the modernisation of administrative routines through its initiative "Zukunft durch öffentliche Dienste" ("Into the future with public services"). The legislation on the reform of public service law came into effect at the beginning of 1997.

When asked about the form in which this support should be provided, the list of answers is topped by “immediate assistance in acute in-house conflict situations” (40 %), “specific training courses” (39 %) and “specific work materials” (36 %).

4

In place of a summary: what remains to be done?

Further analysis that extends beyond this necessarily selective evaluation of the data is certainly desirable as well as necessary to arrive at a more precise understanding of the limitations on – and the options for – the activities of staff councils. More comprehensive and detailed studies should also focus on areas of the survey that we have not looked at in this article (such as “employment”, “salaries, wages, remuneration” and “working hours” as well as the various problems relating to flexibilisation; an analysis of “employment” should also take a closer look at non-typical employment relationships). In addition, the implicit dichotomisation of private sector and public sector should be resolved to allow a more fluid transition between the two, as the attitudes and practices of public sector employers have moved increasingly closer to those of their counterparts in the private sector since the 90s (Keller/Henneberger 1999). Finally, our article treats “the” public sector as a fairly homogeneous entity – something it naturally no longer is in reality.

With this in mind, further analysis should take these trends towards heterogeneity into consideration (for the UK; see Bach/Winchester 2003). In other words, they should make use of the differentiation characteristics that we have been unable to profile in this article:²⁶

Table 6: Areas in which support is desired from the trade union

Topic	No. of mentions	in %
Modernisation of the administration	488	49
Employment security	418	42
Restructuring	413	42
Working hours	407	41
Remuneration	377	38
Dismissal protection	308	31
Technology	168	17
Other	85	9

Source: WSI Works and Staff Council Survey 2002 (3rd survey).

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(1) There are considerable differences in the general contexts for the exercise of influence by staff councils – both between various diverging parts of the public sector (general administration, justice, schools, social insurance, healthcare, public sector enterprises etc.) and between the various levels of the federal system of government (federal, federal state and municipal level). The prerequisites for the representation of interests in the core areas of the public sector differ from those in public enterprises, and the conditions on municipal level are different from those on national level.

(2) There are differences between the staff representation acts in the various German Laender, which sometimes flesh out the framework regulations of the Federal Staff Representation Act to meet the specific political priorities of the legislator (Feldmann 1982; Kübel 1986; Kisker 1992), thereby restricting or extending the “opportunities and constraints” of the staff councils (in areas such as the scope and extent of participation and codetermination rights).²⁷

(3) It is still important to differentiate between west and east Germany to allow empirical investigation of the question that has been the subject of much discussion in recent years – namely that of “convergence or divergence” of labour relations not only in terms of their sectoral aspects but also in terms of their company or establish-

ment-based parts. To date, the public sector has also been seriously neglected in this respect compared to the private sector (summarised in Bergmann/Schmidt 1996; Schröder 2000).

(4) For some analytical purposes, it may be necessary to analyse the so-called tier-based representation bodies (district, overall, main staff council) that were formed as a result of the multi-tier, hierarchical structure of the administration system (national level, Land level, municipal level) separately from the staff councils. In view of the more or less clear-cut demarcations between the staff representation organs, the duties and responsibilities of these tier-based bodies are – in some areas at least – different from those of the staff councils.²⁸

²⁶ The list of criteria could be easily extended. Evaluations based on the areas covered by individual unions would be a further option; surprisingly, these are areas that have not been addressed to date.

²⁷ “Parallel to the amendment of the staff representation act at national level, most of the Laender also reformed their own staff representation acts at the beginning of the 70s. While, however, the Laender with SPD-led governments extended the participation rights of the staff representation bodies (in some cases considerably), most of the Laender with CDU majority adopted a more restrained attitude.” (Kübel 1986: 36)

²⁸ Over 85 % of the data refer to “normal” staff councils.

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